S. HRG. 100-135

POSTAL EMPLOYEES APPEAL RIGHTS

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 541

TO AMEND TITLE 39, UNITED STATES CODE, TO EXTEND TO CERTAIN OFFICERS AND EMPLOYEES OF THE UNITED STATES POSTAL SERVICE THE SAME PROCEDURAL AND APPEAL RIGHTS WITH RESPECT TO CERTAIN ADVERSE PERSONNEL ACTIONS AS ARE AFFORDED UNDER TITLE 5, UNITED STATES CODE, TO FEDERAL EMPLOYEES IN THE COMPETITIVE SERVICE

APRIL 27, 1987

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POSTAL EMPLOYEES APPEAL RIGHTS

MONDAY, APRIL 27, 1987

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD-342, Dirksen Senate Office Building, the Honorable David Pryor, Chairman of the Subcommittee, presiding.

Present: Senators Pryor and Stevens.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. The Subcommittee on Federal Services, Post Office, and Civil Service will come to order.

We are here today in the Subcommittee on Federal Services, Post Office, and Civil Service to take testimony on S. 541, a bill I introduced to give all postmasters and postal supervisors the right to an independent appeals process from adverse personnel actions.

S. 541 has strong bipartisan support in the Senate today, with 57 cosponsors. This legislation is designed to correct fragmented procedures applying to personnel actions and appeals from various postal employees. Postal employees affiliated with bargaining units can avail themselves of the grievance arbitration process to resolve such disputes. Postmasters and supervisors generally must use in-house postal appeals procedures, and postmasters and supervisors who happen to be veterans have yet a third avenue of redress available, that is the right to appeal a personnel action to the Merit Systems Protection Board.

Unfortunately, the result of all of this is unequal treatment of individuals holding similar or the same jobs accused of committing the same offenses. The Postal Service contends that the in-house appeals process is fair and not in need of change. The statistics challenge this, however, since, as I understand it, employees who appeal within the Postal Service are much less likely to have a favorable resolution than their colleagues who are veterans who can appeal to MSPB.

Senator Helms of North Carolina has introduced S. 523, a bill which would extend the MSPB appeal rights even further, to all those not covered by a collective bargaining agreement, including those who have the right to organize and to participate in arbitration but who have not yet done so.

I would like to emphasize this morning that postmasters and supervisors have no such choice. They cannot organize and, therefore, have no access to grievance arbitration.

Congressman Dymally, who recently secured House passage of a companion bill, H.R. 348, has submitted a statement which will be made a part of the record.[1]

We want to hear from those who support S. 541 this morning, such as the associations as well as those who have concerns, such as Senator Helms, who, by the way, I am sorry was unable to be here today. However, Senator Helms has submitted a statement which will be made a part of the record of this hearing this morning.[2]

Also, Senator Heflin of Alabama has a statement in support of this particular piece of legislation which will be made a part of the record.[3]

Senator Stevens of Alaska, we will now call on you. He is the ranking minority member of this Subcommittee and we look forward to hearing from him at this time.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Thank you, Mr. Chairman. I commend you for taking quick action on this bill. As you know, it is not unfamiliar to this Subcommittee, as we reported a similar bill last year. I felt then and I still feel that postal management personnel deserve an appeal process, but unfortunately it appears that this question has become a little bit of a thorny one.

I agree with the statement that you just made that this bill should apply to all postmasters and supervisors. It appears that because of a change in language, that this bill is different from the one we passed out of the Committee last year.

The new language, I am told—and we have had it reviewed by several groups—leaves unclear as to who actually is covered by this proposal. I hope that our intent is clear and our actual language is clear, and I am personally worried about the coverage of the bill that is before us in relation to a single-employee post office, the very small post offices. It does not appear that, because of the way the bill is written, that it would apply to the one-person post office and probably not to the very small ones with one or two.

I hope that during the markup of the bill that we will take time to clarify this. We need to make certain that the bill applies to all of those who are postmasters and supervisors, and anything we can do to get those people the access to the Merit Systems Protection Board process I think will increase the efficiency of the Postal Service.

I hasten to add that I do not think this is a question of disagreement with those people who represent the organized bargaining units who are members of the postal union organizations. In areas where the post offices employ just one or maybe one and a part-time person, it seems to me that there still ought to be coverage,

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[1] See p. 78.
[2] See p. 83.
[3] See p. 94.

and I have had no one from the organized union groups disagree with the bill that we reported out last year.

I do understand that Senator Helms has some questions about the bill that we reported out last year as well as this bill, and we will discuss those with him later.

I thank you, Mr. Chairman, and I look forward to working with you on this bill.

Senator PRYOR. Thank you.

Senator Stevens has raised, I think, a valid concern, and it is my understanding that at the staff level there have been several negotiating sessions to see how we can resolve this particular issue.

Our first witness this morning is David Charters, Senior Assistant Postmaster General, United States Postal Service.

Mr. CHARTERS. Good morning.

Senator PRYOR. Mr. Charters, I think you have a statement and we are ready to receive that statement at this time. If you would like, we would certainly put the entire statement in the record. If you would like to summarize your statement we would welcome that.

TESTIMONY OF DAVID H. CHARTERS, SENIOR ASSISTANT POSTMASTER GENERAL, HUMAN RESOURCES GROUP,[1] ACCOMPANIED BY PETER GARWOOD, GENERAL MANAGER, EMPLOYEE APPEALS DIVISION, U.S. POSTAL SERVICE

Mr. CHARTERS. Thank you very much, Senator Pryor. I will summarize my remarks.

I am David H. Charters, Senior Assistant Postmaster General, Human Resources Group. I am accompanied here today by Peter L. Garwood, General Manager of our Employee Appeals Division at Postal Headquarters.

We believe that the Postal Service currently has an internal appeals process which affords our non-bargaining unit employees, including supervisors, managers and postmasters, very similar protections to those which would be provided by S. 541. These procedures are commonly referred to as the 650 procedures.

That appeals process was developed in consultation with the management associations and changes have been made based in part on the recommendations of these associations. These procedures are not static but, rather, reflect a dynamic, evolutionary process involving both the Postal Service and its employees.

Over the past year or so, we have come to recognize that there is a perception by some of our employees that our internal appeals process may not accord them the degree of objective administrative review which they believe can be obtained before other forums. While we believe that this perception is not correct and that our internal appeals process is both fair and equitable, we certainly do recognize that perception and we are currently discussing those concerns with our management associations.

The Postal Service's adverse action appeal procedures, while providing much the same basic protections as those afforded under

[1] See p. 27 for Mr. Charters' prepared statement.

Title 5, are actually more favorable to the employees in several respects.

Internally, we have a two-step appeal process. At Step I, the employee is entitled to request a hearing. The hearing is conducted by an impartial hearing officer who has received specialized training in the conduct of hearings and the preparation of a report, including a finding of fact. We have recently updated and revised those training materials and we think they are quite good.

After the issuance of a Step I decision under our procedures, the employee has the right to an appeal on the written record to the Assistant Postmaster General, Employee Relations. Based on the arguments raised by the employee in the appeal, there is a full review of the record of the earlier proceedings, including any determination of fact.

In addition, the Postal Service has traditionally been generous in extending deadlines for employees to file briefs.

Over the past five years—and this is somewhat responsive to your introductory comments—from 1982 through 1986, the Postal Service processed 235 adverse action appeals on the merits through Steps I and II of our internal procedures. These cases involved appeals from all categories of non-bargaining employees, including postmasters, supervisors, managers and others.

Of these cases, in 165, or 70 percent, the actions were affirmed, and the rest, 30 percent, were reversed or modified. During the same period, the Merit Systems Protection Board issued decisions on the merits in 145 cases involving postal employees. Of those, 97, or 67 percent were affirmed and the remainder were reversed or modified. So, our internal procedure figure over five years is 70 percent, and the MSPB figure is 67 percent over the same five-year period.

Employees may seek judicial review in an appropriate U.S. court of either Postal Service or MSPB procedure, and in our experience the Postal Service has been upheld by the courts in virtually all of the appeals taken from our internal appeals process.

In regard to the language of the bill, we have two concerns. First, there is a genuine concern and uncertainty, as has been indicated, about who is covered by the bill as presently drafted. Quite frankly, in addition to creating a situation in which employees may be confused as to what their rights are, this creates a real problem for us since we are required to provide the appropriate appellate rights to employees in their letters of decision.

The bill appears to draw its definition of coverage from 39 U.S.C. 1202, which sets certain restrictions to be followed by the National Labor Relations Board for purposes of determining who cannot be included in a bargaining unit. Thus, the bill would extend its coverage to management officials and supervisors, terms which when read in the context of 39 U.S.C. 1202, may be more restrictive than is consistent with most postal usage.

This could produce coverage issues which could not be resolved without determinations of jurisdiction by the Merit Systems Protection Board on a case-by-case basis. Further, there would be a possibility of inconsistencies between the determinations of the Merit Systems Protection Board and the National Labor Relations Board.

In regard to postmasters—and this also would have reference to Senator Stevens' comment a little bit earlier—it is apparent to us from the floor debate in the House during the passage of H.R. 348, a bill identical to S. 541, that the House intended to cover all postmasters by that legislation.

That debate, in reference to all other non-bargaining employees, appeared to predicate coverage on ineligibility to organize collectively into a bargaining unit or to be represented in a bargaining unit. The National Labor Relations Board, the agency designated under the Postal Reorganization Act to make these representation determinations, has received petitions involving only a small number of positions which are not in the traditional crafts. Therefore, no clear determinations have been made in regard to a significant number of postal positions, many of which might be eligible for organization into a bargaining unit based upon NLRB precedents.

Because of the confusion caused by this, we have offered alternative language which would provide coverage to nonveteran preference eligibles until such time that they become covered by a collective bargaining agreement which provides a grievance/arbitration procedure. We remain convinced that appeal procedures will best be administered and will be most easily understood by all if everyone who is not currently covered by a collective bargaining agreement is covered by a single set of rules and standards.

Our second concern involves the mechanism to seek judicial review of decisions of the Merit Systems Protection Board. While we have had a better working relationship recently with OPM on issues for judicial review, we still believe we are necessarily more familiar with postal laws, rules, and regulations than the OPM, and we are in a better position to know the nature, degree and effect of erroneous interpretations of postal laws, rules, and regulations. Therefore, we would prefer that we be authorized to have the right to approach the U.S. Court of Appeals for the Federal Circuit to seek judicial determinations of these issues.

At this time, I would be pleased to answer any questions that the Subcommittee might have.

Senator PRYOR. You have concluded your statement?

Mr. CHARTERS. Yes.

Senator PRYOR. Mr. Charters, who fares better statistically, employees utilizing the arbitration procedure or those appealing adverse actions to MSPB?

Mr. CHARTERS. Statistically, I used the figure of 67 percent of the disciplinary decisions that were sustained under the MSPB procedure for our non-bargaining unit people over the last five years. The record in arbitration for the bargaining units is about 55 percent on that same basis, and those actions are sustained 55 percent of the time, the rest of the time they are modified or in some cases reversed.

There is a much higher percentage of modification under the grievance/arbitration procedure because by its very nature arbitrators tend to divide things. If you can extrapolate then from the bargaining unit experience to a non-bargaining unit experience, the numbers would be 67 and 55 percent.

Senator PRYOR. We have a dispute going here about some statistics. You are claiming that roughly 70 percent of the adverse actions were affirmed; the postmasters claim about 99 percent of the decisions are resolved against the employee. Can you clarify that? Also for the record, if you do not have it available, could you show the percentage of determinations for and against employees for the 1982–86 period for the record? Could you do that for us?

Mr. CHARTERS. On the latter part, what was that again?

Senator PRYOR. We would like to have the percentage of determinations for and against the employee for the 1982–86 period.

Mr. CHARTERS. What type of employees? What type of employees and what type of process?

Senator PRYOR. The postmaster and supervisor levels.

Mr. CHARTERS. Okay. On a combined basis, the postmasters and supervisors, there have been through our internal process 235 cases, through the Merit Systems Protection Board, 145 cases over that period. And we were affirmed internally 70 percent, MSPB 67 percent over that period of time.

Senator PRYOR. You are saying, a decision affirmed is against the employee, is that correct?

Mr. CHARTERS. Well, the original discipline is upheld. In other words——

Senator PRYOR. The original discipline is upheld?

Mr. CHARTERS. Yes. Now, in the case of postmasters, as a subset of non-bargaining, we are affirmed 88 percent of the time. This is a more recent figure. It is not going back to 1982, because I do not think we have them going back that far as a separate breakout. But for the last year and a half, internally in the 650 process, we were affirmed 88 percent of the time, modified 12 percent, it was 2 cases. And in MSPB, there were fewer cases, there were only 7, of which 3 were affirmed, 1 was reversed, and 3 were modified, and that is in about an 18-month period.

Senator PRYOR. What about the possibility of review by MSPB? Is this a mechanism which makes for more careful decision-making with respect to whether an adverse action should be brought in the first place?

Mr. CHARTERS. I think very candidly that in some cases that may be the effect. It should not be, because the standards should be identical under either process and we try and make that as clear as we can to all our managers that are involved in this process. I think there may very well be a perception in some people's minds that they have to hold different standards with one process versus the other.

Senator PRYOR. The Postal Service believes that if this bill is enacted into law it should apply to all employees who are not affiliated with bargaining units. Did the Postal Service ever come to this Subcommittee and recommend legislation to improve the objectivity and fairness of the in-house appeals process? Was there ever any recommendation for a different process?

Mr. CHARTERS. Well, there was never any need to do it on a legislative basis. If we wanted to make improvements in it, we could do that internally, we would not require legislation for that.

Senator PRYOR. Senator Stevens?

Senator STEVENS. The position you are taking this year is consistent with the one you took last year on the bill we had. You believe it should apply to all those not covered by the existing process, is that right?

Mr. CHARTERS. That is correct. I think we have some modifications in the language to make it clear that we are not trying to prevent union organizing campaigns through this legislation but, rather, to say that everyone ought to have access, if anybody has access everyone ought to have access to an outside party, whether it is an arbitrator or MSPB.

Senator STEVENS. But clearly, the people that are left out of the current process are in fact nonveteran postmasters and supervisors, are they not? They can only appeal internally?

Mr. CHARTERS. Non-veteran postmasters, that is correct at the present time, as well as supervisors and managers and others.

Senator STEVENS. There are a group of people who could, if they wanted to, join the other organizations and have the right to appeal to——

Mr. CHARTERS. That is correct, and yet there is considerable confusion as to who those groups are, because that would have to be a case-by-case determination with the National Labor Relations Board.

Senator STEVENS. Putting aside that question, though, that the law was defective—maybe I should not use that word—the law ignored the rights of postmasters and supervisors in terms of having the alternative of appealing other than in-house?

Mr. CHARTERS. That is correct. The law requires us to provide a "fair hearing" and we had in a previous court case had that tested with our internal procedure and it was found to meet the standards of the Postal Reorganization Act.

Senator STEVENS. Is there a downside here that the postmaster is given the right to appeal to the Merit Systems Protection Board and if he or she does so, the decision is fixed, rather if they appeal in-house with the possibility that an in-house decision can modify the disciplinary decision? Is that right?

Mr. CHARTERS. Well, I am not sure I fully understand your question. In either process, even after a final decision, conceivably a change could be made after that point administratively.

Senator STEVENS. It is my understanding that the Merit Systems Protection Board could not go back and substitute itself for the supervisor who made the disciplinary decision.

Mr. CHARTERS. In theory.

Senator STEVENS. It can affirm or reverse or it can say that it is too harsh, but it cannot substitute for the discipline involved.

Mr. CHARTERS. Well, that is basically correct, but when they do modify they can change, for example, removal to a suspension or to a downgrade, they can do things like that through——

Senator STEVENS. So you do not see any perceptible difference, then, between in-house appeal and going to the Merit Systems Protection Board?

Mr. CHARTERS. Yes, I think internally we tend to do that a lot more, we tend to work out a situation that is favorable to all parties, where MSPB is much more mechanical. They do not modify it many times. They do have the ability to modify, however.

Senator STEVENS. Is there an intermediate process in the in-house appeal that is not there in the Merit Systems Protection Board? I am led to believe there is some kind of initial review process that leads to consensus quite often. Is that so?

Mr. CHARTERS. The disciplinary process is the same under both systems. These are really appellate systems, that after the discipline is taken—ours is a two-stage appellate, whereas their's is only one stage.

Senator STEVENS. That is what I am saying, tell us about the two-stage.

Mr. CHARTERS. Well, the initial level of appeal in our system would go to a regional individual for adjudication, and if the appellant is not satisfied with that decision they can appeal up to the Assistant Postmaster General for Employee Relations.

Senator STEVENS. How many of these cases stop at the first level in-house?

Mr. CHARTERS. I can supply you with that figure. A number of them do. I would say probably more than half of them do, but I would be speculating. I can supply you with that number.

[The information referred to follows:]

INFORMATION DEVELOPED FOR CALENDAR YEARS 1985 AND 1986

	Calendar year 1985		Calendar year 1986	
	Number	Percent	Number	Percent
Affirmed	21	45	29	49
Reversed	4	8	3	5
Modified	4	8	1	2
Settled	13	28	11	19
Withdrawn	5	11	15	25
Total	47		59	

Senator STEVENS. Well, I am just reflecting a personal conversation I had with one of the postmasters at home that indicated that there was a down side to this process, and if they did take this they automatically come to a Washington process, whereas if they stay in-house they go to a regional process and in many instances can work out on a regional basis things that they might not be able to work out in Washington. If that is so, I would like to have some documentation of it.

Mr. CHARTERS. Well, I do not really think that is so, because it would go to the region first and only if they were not able to work something out would they have the ability to appeal to us.

Senator STEVENS. You do not know how often they do in fact work it out.

Mr. CHARTERS. No, but I can supply it. I can supply you with the number of cases that stop at that level.

Senator STEVENS. Clearly, if the bill passes and they opt to go to the Merit Systems Protection Board, it is a one-stop case.

Mr. CHARTERS. That is correct.

Senator STEVENS. Thank you.

Senator PRYOR. Out in the postal community I keep hearing about the case of the Postmaster in Paramount, California, Ms. Robinson, the Postmaster. I think this is used as one of the horror

stories of the present in-house process. I would be interested in the Postal Service's comment on defense of the Robinson case?

Mr. CHARTERS. First of all, Senator, I do not think we feel we need a defense. This lady was discharged some years ago, a female postmaster, for a variety of charges, went through the internal process and the discharge was affirmed. Based on the efforts of Congressman Dymally and Congressman Horton and others, when the current Postmaster General, Bob Tisch, came to Washington he was asked to review the case and see if something could be worked out to re-hire Mrs. Robinson in the Postal Service.

He did look at it, he did make an offer to her through the Congressmen to return to a position in that same geographic area, not as a postmaster. We thought that was all worked out. A period of several months ensued, she did not come back to work. Since that time, she has indicated she did not want to come back to that particular division of the Postal Service, so I have on two separate occasions offered her an open-ended offer of which division she would like to work in, and so far over the period of several months she has not responded to that request, rather she is asking for a continuing investigation of the allegations that underlay her discharge back some years ago.

So we are trying our best to offer her a position and she does not seem willing to take it at this point.

Senator PRYOR. I have some other questions, Mr. Charters, that I will not ask orally right now because of our time situation this morning. We will keep the record open for several days, and we will submit questions in writing not only to you but also to the witnesses that follow.

Senator Stevens.

Senator STEVENS. I just have one statement to make. If my information, based upon staff review, that based upon current NLRB decisions, a postmaster in a one-person post office is not a supervisor. Is that the position of the Postal Service?

Mr. CHARTERS. I think that is the position of the National Labor Relations Board. We would be in favor, if this bill passes, of making it abundantly clear that all postmasters are covered. As a matter of fact, we would suggest that the language be amended to specifically include that. They are not the people that we have the question over. They are the managers, the clerical employees, people like that that we really are not sure——

Senator STEVENS. Well, that is the next question. You have taken the position that where people are in supervisory or confidential employee categories and are not in organized bargaining units, they ought to be given the same rights as postmasters under our intent of this bill, right?

Mr. CHARTERS. That is correct.

Senator STEVENS. How many people are involved in that category?

Mr. CHARTERS. I cannot give you a precise number, but it is in the thousands that we believe ought to be covered that are not under a literal reading of this bill.

Senator STEVENS. Are there any of those in that category who, because of Postal Service practice, would be in violation of tradition if they joined a bargaining unit? In other words, they are a

confidential assistant to a postmaster or they are involved in supervisory, financial management. Are there areas where you find where it is sort of known that they are expected not to join a bargaining unit?

Mr. CHARTERS. That is——

Senator STEVENS. That is a tough question, I know, because you are not supposed to have such traditions, but I think they exist.

Mr. CHARTERS. Well, I think there are a number of people who tend to think of themselves or identify more with management and consequently are not particularly interested in joining a bargaining unit or a union. We feel people in that capacity ought to have the same rights everybody else does.

Senator STEVENS. I do not know quite how to say this and get the answer, but are there people in the Postal Service hierarchy that, if they joined a bargaining unit, would be in jeopardy as far as their job was concerned?

Mr. CHARTERS. Definitely not.

Senator STEVENS. I understood that. You are obligated to say that. As a practical matter, there are some that, because of their confidentiality relationship to supervisors, are really in the supervisory area, are there not?

Mr. CHARTERS. Yes, there are some that I certainly identify much more with management and we consider them part of management.

Senator STEVENS. Could we eliminate this dispute we have got between organized labor and the Postal Service by defining those people in the law? Can we narrow it down to the point where we really do have the management family in management and say the others, if they want to have the appeal rights to the Merit Systems Protection Board, they have got to join a——

Mr. CHARTERS. I do not know that——

Senator STEVENS. They would still have rights in-house, even if they do not, but their rights are in-house unless they do join, right?

Mr. CHARTERS. Right. I do not think——

Senator STEVENS. It seems to me one of the problems here is Congress failed to define a management group per se in the Postal Reform Act, and you are saying right now you want everybody included because of that, is that right?

Mr. CHARTERS. That is one of the reasons. I do not think we could define them with that degree of specificity. You would almost have to do it by exclusion, because we create new positions all the time. There would be a continuing, on-going debate about which positions, since they were not listed in any degree of specifics as of today, would be covered. I think you would have to do it on a much more generic basis than that.

Senator STEVENS. My experience is once you get in that family you suddenly have a grade level that is a little bit high, you are in the situation where your boss goes then you go, too. Now, that is the group I am thinking about. How do you do that? In the old days, when I was in the Department of the Interior and you were above Grade 15, you were in that area, if the administration changed you were going to go, one way or the other. Now, that still exists, does it not?

Mr. CHARTERS. Well, it does. We have, as a matter of fact, with certain minor exceptions, we have a separate pay schedule for non-bargaining unit employees and that would be one way obviously of defining it, is anyone in that pay schedule who is not in a bargaining unit.

Senator STEVENS. Well, I would like to add, I hope you will work with our staff and see if we can solve this problem and get this bill passed. Last year, the bill was stopped and, very frankly, it is going to be stopped this year in my judgment unless we resolve this issue that pertains to those people who are in the special category along with postmasters who I think we should recognize are part of the management team. If they are not part of the management team and they do not want to join, they have made the decision to appeal in-house as far as I am concerned. But if they are part of the management team, they ought to have the same rights as any other member of that team, and one of them we are trying to give them is the right to appeal to the Merit Systems Protection Board.

I appreciate the help and, if the Chairman agrees, we could just have a little team and see if we can work out that definition——

Mr. CHARTERS. Well, we would be happy to work with you on that.

Senator STEVENS [continuing]. From the bargaining units. I think they would be interested in getting the thing resolved, too.

Mr. CHARTERS. I think we are all interested in getting it behind us and moving on to other issues.

Senator STEVENS. Thank you.

Senator PRYOR. Mr. Charters, thank you.

Mr. CHARTERS. Thank you, Mr. Pryor.

Senator PRYOR. Now we are going to have a panel: Mr. Ron Swisher, President, National League of Postmasters of the United States; Mr. Hugh Bates, President, National Association of Postmasters of the United States; and Mr. Rubin Handelman, President, National Association of Postal Supervisors.

Would you gentlemen please come forward at this time.

Mr. Swisher, we would ask you at this time to make your statement. I see you are accompanied by Mr. Ed Bowley on your left. Does Mr. Bowley also have a statement or is he just there for moral support?

Mr. SWISHER. He is just there to hold me up, Senator.

Senator PRYOR. All right. Well, we look forward to your statement.

Mr. SWISHER. Thank you. Mr. Chairman and members of the Subcommittee——

Senator PRYOR. Why not summarize these statements this morning.

Mr. SWISHER. I am going to. I have offered a full statement, and I will just give a summary.

Senator PRYOR. Fine. Thank you, sir.

Mr. SWISHER. In fact, I will not even give——

Senator PRYOR. By the way, Senator Stevens has an important meeting in ten minutes. I do not think we can conclude this in ten minutes, but we are going to try and conclude it not much later than 11:00 o'clock. We will try to shoot for that time.

Senator STEVENS. I thank you, Mr. Chairman. I hope you will excuse me, because I have some people who have flown in from Alaska to meet me here.

Senator PRYOR. By the way, Senator Stevens, before we hear from this distinguished panel, would you like to ask any questions before they make a statement.

Senator STEVENS. As I have reviewed these statements, they are almost a summary of the position that was expressed last year. There is not anything new in them, is there? They seem to be the same position.

Mr. SWISHER. Before you leave, I would like to thank you for the diligence and the way you handled S. 2134 last year through the committees, Senator. We appreciate that and I am sure that you will help us this year with the Postal Service and the bargaining units and so forth to help us iron out anything that would get in the way of this bill.

Senator STEVENS. Thank you. That is my intention. I have looked over the statements.

Senator PRYOR. Proceed, Mr. Swisher.

TESTIMONY OF RON SWISHER, PRESIDENT, NATIONAL LEAGUE OF POSTMASTERS OF THE UNITED STATES,[1] ACCOMPANIED BY ED BOWLEY, LEGISLATIVE CONSULTANT; HUGH BATES, PRESIDENT, NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES; [2] AND RUBIN HANDELMAN, PRESIDENT, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS [3]

Mr. SWISHER. Mr. Chairman and members of the Subcommittee, I am Ron Swisher, President of the National League of Postmasters. I am accompanied today by Ed Bowley, our Legislative Consultant.

Mr. Chairman, we want to commend and thank you for scheduling this hearing in an expeditious manner. Most importantly, we thank you for sponsoring S. 541, a bill that will guarantee postmasters and postal supervisors a fair and impartial hearing.

We are pleased to note the same bipartisan support on S. 541 as H.R. 348 enjoyed in the House where it was approved on March 3, 1987, under the unanimous consent procedure of that body.

We are delighted to report to you that more than 60 of your colleagues in the Senate have seen fit to cosponsor S. 541 and that total documented support for the measure now exceeds 80 Senators, including all members of this Subcommittee as well as the full Governmental Affairs Committee.

A similar bill, S. 2134, offered by the distinguished Senator from Alabama, Mr. Heflin, narrowly missed an opportunity for the full Senate approval in the closing days of the 99th Congress, and that is what we thank you for helping with that bill, Senator Stevens, last year in the 99th Congress.

S. 541 will provide postmasters with the same protection afforded to competitive service employees, including nonveterans, when they face adverse personnel actions initiated by their agencies. The

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[1] See p. 38 for Mr. Swisher's prepared statement.
[2] See p. 64 for Mr. Bates' prepared statement.
[3] See p. 73 for Mr. Handelman's prepared statement.

same protection is afforded the bargaining unit employees of the U.S. Postal Service in like circumstances. S. 541 guarantees equity.

S. 541 would in no way change the existing administrative internal procedures of the U.S. Postal Service. The proposed legislation will give non-bargaining unit, non-veteran employees access to an appeal "outside" the U.S. Postal Service—to the Merit Systems Protection Board. We believe, Mr. Chairman, this change to be fair and reasonable and long overdue.

I would like to say, Senator Stevens, you asked about the down side, the way it is right now, if this bill passed postmasters and supervisors would still have access to the Postal Service appeal system, as it is now or as it is improved in the future.

S. 541 differs from its predecessor House bill, H.R. 2854, in the previous Congress, as we have accepted language sought by the U.S. Postal Service and approved by the Senate Governmental Affairs Committee in 1986, providing the Postal Service a means of appealing an MSPB decision establishing a precedent related to USPS rules and regulations. Under S. 541, the Postal Service could, through the Office of Personnel Management, appeal a precedent-setting MSPB decision to the Federal courts.

For the record, we wish to state from the outset that our interest in S. 541 is not to be construed as criticism of the Postal Service or a reflection of unfairness or unscrupulous action on the part of its senior management. We believe the existing system, in theory, is fair; however, in practice, it has often been unfair and some postmasters and supervisors have suffered unjustly. We further believe that a system must be fair in every respect and administered equitably to all of its employees. Currently, certain postmasters and supervisors, specifically veterans, have appeal rights to the MSPB, and the remainder do not.

Mr. Chairman, we wish to establish several facts that we believe clearly provide the justification for enactment of this measure:

Prior to the Postal Reorganization Act, all postmasters enjoyed fair and impartial hearings on adverse personnel actions through the then Civil Service Commission or now the OPM.

Since that time, the Postal Service has only provided veterans with such equity. It is also noted that the ensuing years have witnessed postmaster ranks to now include a majority of non-veterans, made up mostly of female postmasters.

Postmasters and supervisors are the only group of postal employees without the right to join or form a bargaining unit, which would guarantee them appeal rights to an outside party.

By the way, as David Charter has testified, the Postal Service concedes that S. 541 would cover all postmasters, even those in offices where the postmaster was the only employee or the postmaster and a part-time employee.

The present system is de facto sex discrimination against the female postmasters who do not have veterans preference. They do not have the same rights and protection and privileges afforded the male postmasters because of the veterans preference.

The Postal Service sits as judge, jury and prosecutor against employees who do not have the option to appeal to the Merit Systems Protection Board. For documentation on this issue, we would be

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pleased to make copies of our 1985 House testimony available if this Subcommittee believes it desirable.

Mr. Chairman, I am speaking from experience. I attended the Comprehensive Hearing Officer Training in the late 1960s and served as a hearing officer and supervisor over all hearing officers in my region before becoming a postmaster in 1972.

I have observed through practice that generally the Postal Service is more ready to resolve cases which may go to the MSPB than those which they may not appeal to the MSPB. Mr. Chairman, I would propose that this is a reason that some of the statistics do not show the real picture, because if a postmaster or a supervisor has the right to appeal to the MSPB, management proposing to take the action will attempt to work out something before taking that action.

S. 541 would result in a savings for the Postal Service because of creating a climate conducive to resolving the cases at a lower level. Additionally, fewer cases would be likely to go to the EEO or to the courts.

S. 541 would make field managers accountable and will preclude the coverup of deceit and deception which occur in rare instances, in addition to the formal appeal procedure. The MSPB has a voluntary expedited appeal procedure which may be used to resolve the most part of the less complicated cases, such would be a savings to the USPS and in the cost of the disciplinary procedures.

For these reasons, I believe this bill would actually result in a savings to the Postal Service in the long run, because fewer cases would be taken to the formal procedure.

If the Postal Service is as interested in protecting employee rights in the fair appeal system available to employees as it says it is, then how can the Postal Service object to providing equal rights and equal routes of appeal to its managers? We heard today that I believe they are not objecting to this. I believe now all we have to do is work out the details.

Included in the advantages of having a third party appeal, the MSPB procedure is superior to that of the postal system because of assurance that the appeal will be decided and adjudicated within 120 days after the case is docketed. There is no such restriction by the Postal Service. Some of the Postal Service cases are taking much longer than that to adjudicate to the final decision.

MSPB requires that the agency establish the case by preponderance of evidence and that the agency has the burden of proof. The appellant has the burden of proof when affirmative defense is claimed. The MSPB provides that discovery may be used to obtain relevant evidence which has not previously been provided. The Postal Service does not provide all material which may be or has been used against the appellant and the Postal Service does not provide discovery. Failure of any party in the MSPB hearing to abide by the orders of the presiding official may result in the imposition of sanctions. The MSPB may issue a subpoena for the attendance of witnesses for deposition or hearing. The postal hearing officer may not issue such a subpoena. The postal hearing officer may also preclude necessary witnesses from the hearing, and that is generally not the case in the MSPB.

S. 541 does not seek any preferential treatment for nonbargaining unit employees. S. 541 has the intent and purpose of seeking equal treatment and appeal rights for non-veteran postmasters and supervisors in the Postal Service as given to other non-veteran employees in the Federal service. Employees without veterans preference in agencies other than the Postal Service may appeal to the MSPB.

Mr. Chairman, your indulgence and consideration is appreciated, and I want you to know that the interest and intent of the National League of Postmasters is to balance the wheels of justice, to provide the same fair treatment to postmasters and supervisors as given to other Federal employees.

S. 541 is needed for the welfare and benefit of over 19,000 postmasters plus all the supervisors who are non-bargaining unit employees in the Postal Service without veterans preference or the right to the MSPB.

The National League of Postmasters believes that discipline is necessary to the management of any workforce and in no way would argue that discipline is not required. Employees should not be retained because of theft or embezzlement or other serious matters of a performance nature. However, just as strongly, the League believes and supports equal access to various appeal systems by all postal managers.

We are aware of S. 523, a bill sponsored by Senator Jesse Helms, the senior Senator from North Carolina, which would extend coverage of the provisions of S. 541 to certain other postal employees. We would like to express our views on that measure.

First and foremost, we thank Senator Helms for the interest he has expressed for providing postmasters and postal supervisors the same fair and equitable hearing provided for in S. 541. However, it must be stated for the record that only non-veterans postmasters and postal supervisors are without access to such a hearing under existing law.

Those additional employees extended such privilege under S. 523 already have access to an impartial review of adverse actions through arbitration procedures provided by collective bargaining.

Further, it is noted that such employees have not evidenced any interest in this matter by participation in either the House or the Senate proceedings.

Finally, the League would support any individual's rights to access to a fair and impartial hearing on adverse personnel charges, and we believe that, with enactment of S. 541, such access will be available to all postal employees.

Again, Mr. Chairman, on behalf of the nation's postmasters who are denied equity on adverse action decisions, I want to thank you for your interest and support and to thank you and the members of this Subcommittee for the expeditious manner in which you have conducted these hearings. We request your support for the early enactment of this legislation and we stand ready to assist you in any manner to accommodate this realization.

We would be pleased to respond to any questions.

Senator PRYOR. Mr. Swisher, thank you. You are the President of the National League of Postmasters of the United States?

Mr. SWISHER. Yes.

Senator PRYOR. Our next witness, Mr. Hugh Bates, is President of the National Association of Postmasters of the United States.

Mr. Bates, we welcome your statement.

Mr. BATES. Thank you, Mr. Chairman. I would request that my entire written testimony be entered into the record.

Senator PRYOR. It is so ordered.

Mr. BATES. I have an abbreviation from my written remarks to deliver, if it would please the Chair, I would like to abbreviate from that.

Senator PRYOR. Thank you.

Mr. BATES. I would like to comment personally and maybe not even read the testimony that you have there. Before postal reorganization, as Mr. Swisher has stated, all postmasters enjoyed the same rights to appeal adverse actions to the Civil Service Commission.

In 1970, Congress was having a very difficult time passing the Postal Reorganization Act. I was active in the National Association of Postmasters at that time and the then Postmaster General, Winton Blount, only lived 35 miles from me. They were having a very difficult time here in Congress getting postal reorganization passed and getting the office of Postmaster General taken out from being a member of the President's Cabinet.

Postmaster General Blount came to me and several other NAPUS officers and asked us to come to the Hill and talk to Members of the House and Senate. He asked us to help get postal reorganization passed. We did this with a complete understanding that we were not going to lose any rights or any benefits that we enjoyed. Appealing adverse actions outside the Postal Service was one right and benefit that the nonveteran postmasters lost.

I personally did not lose my right and benefit there. I happen to have had the opportunity to serve our country during the Korean War, which entitled me to a 10-point veterans preference. I am entitled to appeal to the Merit Systems Protection Board.

The majority of the 28,000 postmasters in this country are women who did not have the opportunity to serve their country and become veterans, so they do not have the same privilege that I do. I am not arguing for anything for myself, but I am for my constituents.

I would like to see all of our people have the same rights. I think if the Postal Service is really concerned about every employee of the United States Postal Service, having the right to a fair, impartial judgment and hearing, they would have no objections to this bill whatsoever. I hope that they will go along with us on the bill to see that what was promised to us back in 1970 is restored. I will try to dig it up in the written records but I know we were told verbally that our appeal rights would not be changed. I know we came up here to Capitol Hill and worked on behalf of the Reorganization Act with the understanding that our rights would not be taken away.

You have heard the testimony, you are going to hear from my colleagues here, it is all down in writing, but I just want to bring out these points to you. What we were promised in 1970 has been taken away from us and we think the Postal Service owes it to us, we think they owe us their cooperation to restore it to us.

We certainly appreciate your introducing S. 541 and I appreciate the opportunity of appearing before you and your Committee. I would be glad to try to answer any questions that you might have, sir.

Thank you.

Senator PRYOR. Thank you, Mr. Bates.

Now, Mr. Rubin Handelman, who is the President of the National Association of Postal Supervisors. We appreciate you being here this morning and look forward to your statement.

Mr. HANDELMAN. Mr. Chairman, I am President of the National Association of Postal Supervisors, an organization representing some 44,000 mid-level managers in the U.S. Postal Service, with me today is the Executive Vice President, Vince Paladino, and National Secretary, Margaret Grant, and they are seated in the audience.

In the interest of time, I have summarized my remarks but I ask that my full statement be printed in the record.

Senator PRYOR. It is so ordered.

Mr. HANDELMAN. We are grateful for this opportunity to testify on S. 541, a bill to grant Merit Systems Protection Board appeal rights to supervisors and managers in the Postal Service, and sincerely thank you for your leadership on this issue.

The need for this legislation is simple. The current internal disciplinary process is not fair. It places the Postal Service in the role of prosecutor, judge and jury.

First of all, S. 541 would establish equity and fairness for supervisors and managers. Currently, only veterans preference eligibles are allowed to appeal a disciplinary case to the Merit Systems Protection Board. Women are excluded since the vast majority have never served in the armed forces, and any supervisor who was born after 1957 does not qualify as a veterans preference eligible.

The Postal Service is quick to point to its record of equal employment opportunity. Yet, denying an individual a right primarily on the basis of age or sex is not equal opportunity.

We recognize there are some management employees who would not be covered by S. 541. These employees, by law, have the right to join or form a collective bargaining unit and if they choose to do so, may go the route of arbitration in appealing disciplinary cases.

The vast majority of our members, however, are prohibited by law from joining or forming a union and consequently are locked into the current internal disciplinary process.

Recently, the Postal Service expressed concern that many of the people represented by this organization would not be covered. S. 541 as drafted covers all employees who are either a management official or a supervisor. The Postal Service contends there are some positions now represented by NAPS that are not managerial or supervisory in that the employee does not directly supervise other employees.

The issue of who this organization represents and which positions are considered to be managerial or supervisory was settled by the U.S. District Court for the District of Columbia. The Court ruled, and the Postal Service agreed, that the positions in question were to be considered managerial for the purposes of NAPS representation. Our contention that employees NAPS represents are cov-

ered under this legislation is not speculation but, rather, based on solid legal grounds which the Postal Service is required to uphold.

We believe S. 541 will help the Postal Service, not hurt them. There appears to be a direct correlation in the treatment supervisors and managers are receiving under the Postal Service internal disciplinary process and the number of equal employment opportunity cases that have been filed. Many employees out of desperation and frustration are filing EEO cases because they cannot get justice any other way.

In addition, there is a decided lack of continuity in the decisions throughout the country. Postal Service headquarters continues to set policy, but the 74 divisions created under reorganization have a great deal of latitude in determining not only their own needs for operational purposes, but are being allowed to decide how to discipline, promote and treat their own employees. This is particularly true when policy is not specific, as is often the case, which allows for varied interpretations throughout the country.

The second reason why this legislation is necessary is because the current system works against the individual. When a supervisor receives discipline, there are clear and firm guidelines on when that individual must appeal. Unlike the employee who has been charged, there is nothing definite which states the Postal Service must respond within a given number of days and they never lose a case based on delay. That is not the case for the supervisor.

Also, under the ELM 650 process, there is no provision for the payment of legal fees even if the decision is rendered in your favor. In addition, should the supervisor still receive no satisfaction even at the headquarters level, their only recourse is to take the matter to court, again costing the individual a great deal of money.

Too often, we find top-level management merely reaffirming the decision of their subordinates in a disciplinary case, contrary to the facts of the case. The supervisor or postmaster is presumed guilty. The burden of proof is on the individual, contrary to our constitutionally established process of justice.

Recently a case was brought to our attention that clearly shows how unfair this current internal process is and why S. 541 is necessary. I will not read the entire case, since the Subcommittee has received a copy of my entire statement. Suffice to say, this female supervisor, who was not a veterans preference eligible, went through two years of hell for what ended up being a letter of warning for failure to report an accident.

First, she was falsely accused of being responsible for an accident that resulted in a death, even though she had only been in the office for three days when the accident occurred; falsely accused for abuse of sick leave and falsely accused of falsifying a time card.

The letter of warning was given for failure to report an accident. She spent $20,000 on legal fees and has been unable to work due to a medical condition that the Postal Service's own doctors finally ruled was work-related. Out of desperation, she filed an EEO case which she eventually won. I will not even go into the harassment and intimidation and unfair treatment given to her husband, who was also a postal employee.

Obviously, we are not to the point in the Postal Service now where discipline can be totally eliminated. But NAPS believes that

the Postal Service should consider a far more sophisticated approach, such as talking to that individual, providing training if it is necessary, and then asking the supervisor to make a recommitment to their jobs and the organization. If a problem still exists, then possibly that individual does not belong in the management ranks.

Our thoughts on discipline, however, do not mean MSPB appeal rights are not necessary. Supervisors and managers in the Postal Service need an outside agency when they are faced with unfair and unwarranted discipline. Your legislation would at least give them a fair chance for justice. I would be happy to answer any questions.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Mr. Handelman.

On another subcommittee that I chair, we are holding oversight hearings right now on the Internal Revenue Service. What we are finding very clearly is that if the IRS says the taxpayer has not paid his taxes, the taxpayer is presumed to be guilty.

Now, we have a similar situation, it appears, in the Postal Service. Is the postal employee presumed to be guilty?

Mr. HANDELMAN. I would say yes.

Senator PRYOR. How did that find its way into the law? Did we do this when we reorganized the post office in 1970, Mr. Bates or Mr. Handelman?

Mr. HANDELMAN. I do not know if it goes back that far or if it is just the last few years, but it seems now the supervisor or postmaster is given the charges. That particular person who gets the charges must prove themselves innocent. In other words, there is really not much proof shown where the person is guilty. It is more on the individual that is accused, rather than the accuser.

Senator PRYOR. In every facet of our legal and judicial system, with the exception of the Internal Revenue Service, and now I am finding with the Postal Service, the accuser has the burden of proof, and now we find that the accused has the burden of proof in our Postal Service. Is this correct, Mr. Bates?

Mr. BATES. That is exactly right, because when a postmaster is accused, he is taken out of his office. He may even be put on administrative leave and paid, but the damage is done. If someone comes into my office and accuses me of sexual harassment, I am removed from my office. The local paper puts it across the headline, everyone in church talks about it, everyone on the street talks about it. My reputation and my family's reputation is destroyed and I have to go hire an attorney and come back and prove that that the charge is not true.

Once I come back and prove that I was not guilty, that they made false charges, it that is too late. The people in my little community in rural Alabama are like many other communities, they believe what they hear first, or if it makes the big news in Birmingham, Alabama, in the Birmingham News, that the Clanton postmaster was removed for sexual harassment, then when it comes back that I have proved my innocence, it is put back on page 4, rather than page 1. So it is left up to the person who is accused to prove that they are innocent.

The biggest joke in the Postal Service is when the postal inspector walks in the backdoor in the morning and says to the postmaster, "I am here to help you." Of course, the second biggest joke is when the postmaster says he is glad to have the inspector there, because it is not so. But the inspectors will tell you to prove yourself innocent, because they think you are guilty.

Mr. HANDELMAN. Mr. Chairman, also I happened to be sitting in the audience when Mr. Charters testified and I think I heard him state that 67 percent of the cases that went to MSPB, the Postal Service was correct in those 67 percent of the cases, and in my opinion that is a poor percentage record for the Postal Service to have if it is only 67 percent. I think their record should be way up in the 90's if they are accusing somebody. In other words, two out of three are upheld, and that is a bad percentage if one gets away with it. In my opinion, if there were 200-some-odd cases or if there were 300 cases, 100 actually prove themselves innocent.

Senator PRYOR. That is a good point. I think the Postal Service indicates that about 70 percent of the in-house actions are affirmed.

Mr. HANDELMAN. I thought they used 67 or 70.

Senator PRYOR. Either way, then, a large percentage of its decisions are affirmed through the in-house process.

I was very sorry that Senator Helms could not come. He had a conflict this morning. I always hate to bring up one of my colleagues in discussion without giving him a chance to respond.

Senator Helms sent a "dear colleague" letter out recently, and I will quote: "The postmasters don't care which bill gives them this right, they simply want to see some action." Now, would this be the position of the associations that are represented here today, Mr. Swisher? Maybe I had better pose that to all three.

Mr. SWISHER. I could not say that we do not care which bill. I could say that we want access to the MSPB for the postmasters and the supervisors, and that this bill, S. 541, is the only bill that we believe has a chance for passing and therefore we are very much more interested in S. 541.

If Senator Helms' bill goes forward, we know that we would then be bucking the organizations——

Senator PRYOR. By the way, Senator Heflin is a cosponsor of this bill. I just want to make the record clear.

Mr. SWISHER. Senator Heflin from Alabama, I know him well.

But Senator Helms' bill would put us up against organized labor and we in no way want that. We believe if the people who are not covered by S. 541 are interested in coverage, they could have at least contacted us. We have had no contact.

Senator PRYOR. Mr. Bates, would you like to comment on this, or Mr. Handelman?

Mr. BATES. I agree with Mr. Swisher 100 percent on it. I think the people who are not covered by this, if they were interested at all they would have at least contacted some of us who are working on the bill and asked us to include them and they have not, so I would say certainly it does make a difference. I think S. 541 is the answer to our problems and hopefully, as a majority of the Senators have already stated, they agree. I hope the entire Congress and the White House, the administration also agree with that.

Senator PRYOR. And the postal supervisors, Mr. Handelman?

Mr. HANDELMAN. I have read both bills with my colleagues and we are definitely all in agreement that S. 541 would serve our membership in the fashion we are looking for. We are all for S. 541.

Senator PRYOR. And I assume all of the groups represented here this morning have a legislative agenda for the 100th Congress. On the legislative agenda, where would S. 541 be on the list of priorities? Mr. Swisher, what about your group?

Mr. SWISHER. Very definitely it is all out by itself, number one. It is one through nine actually.

Senator PRYOR. It is at the top of the list?

Mr. SWISHER. Yes.

Senator PRYOR. Is that correct?

Mr. SWISHER. Yes.

Senator PRYOR. Mr. Bates, what about your organization?

Mr. BATES. Yes, sir, S. 541 is right at the top of the list.

Senator PRYOR. And Mr. Handelman?

Mr. HANDELMAN. The same fashion, it is number one, the number one item that we are looking for.

Senator PRYOR. If passed, what would S. 541 do for employee morale?

Mr. HANDELMAN. I definitely think it would pick the morale up slightly from what it is now, but it would definitely have a tendency to pick morale up.

Senator PRYOR. Mr. Bates?

Mr. BATES. I think it would pick it up tremendously. I think it would be like an early Christmas present to the people out there in the field. Definitely that is the number one question on their mind, how does S. 541 go, that is the first bill they ask me about.

Senator PRYOR. Mr. Swisher?

Mr. SWISHER. There is a lot of fear, there is fear that somebody is going to come into their office and do something like they hear these horror stories. S. 541 would give them a feeling that somebody here on the Hill is listening and cares about them.

I would like to say also, on behalf of the Postal Service and Mr. Charters, that he is working with us in trying to put down the horror stories out there. Unfortunately, it is like a lot of other things, if we had that kind of cooperation throughout the country, maybe we would not need S. 541, but the fact is there are things continually, little fires starting up all over that lead us to believe it is needed now more than ever.

Senator PRYOR. Well, let me conclude by just stating that evidently there is a problem in the postal community, because very seldom do we see a piece of legislation in this early part of a session of Congress with over half, approaching 60 percent of the members of the United States Senate, as cosponsors. We have held this hearing, we will soon take S. 541 before the full Committee and let the full Committee work its will. Ultimately we hope the United States Senate will do the same.

I want to thank all of you for being here this morning. Your statements have been very well done and will be printed in the hearing record. We will at this time adjourn the hearing.

Thank you.

[Whereupon, at 11:10 a.m., the Subcommittee adjourned to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

100TH CONGRESS
1ST SESSION

S. 541

To amend title 39, United States Code, to extend to certain officers and employees of the United States Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are afforded under title 5, United States Code, to Federal employees in the competitive service.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19, 1987

Mr. PRYOR (for himself, Mr. GLENN, Mr. LEVIN, Mr. BINGAMAN, Mr. HEFLIN, Mr. BURDICK, Mr. CONRAD, Mr. MATSUNAGA, Mr. SARBANES, Mr. HARKIN, Mr. INOUYE, Mr. D'AMATO, and Mr. FORD) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend title 39, United States Code, to extend to certain officers and employees of the United States Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are afforded under title 5, United States Code, to Federal employees in the competitive service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1005(a) of title 39, United States Code, is amended by adding at the end thereof the following:

"(4)(A) Subchapter II of chapter 75 of title 5 shall apply—

"(i) to any preference eligible in the Postal Service who is an employee within the meaning of section 7511(a)(1)(B) of such title; and

"(ii) to any other individual who—

"(I) is a management official or supervisor in the Postal Service, or an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity; and

"(II) has completed 1 year of current continuous service in the same or similar positions.

"(B)(i) The second sentence of paragraph (2) of this subsection applies with respect to the provisions of subparagraph (A) of this paragraph, to the extent that such provisions relate to preference eligibles.

"(ii) The provisions of subparagraph (A) of this paragraph shall not, to the extent that such provisions relate to an individual under clause (ii) of such subparagraph, be modified by any program developed under section 1004 of this title.

"(5)(A) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Merit Systems Protection Board by filing a petition for judi-

cial review in the United States Court of Appeals for the Federal Circuit if—

"(i) the Postal Service—

"(I) determines, in its discretion, that the Board erred in interpreting a law, rule, or regulation affecting postal personnel management, and that the Board's decision will have a substantial impact on a postal law, rule, regulation, or policy directive; and

"(II) notifies the Office of its determination under subclause (I) of this clause in accordance with procedures prescribed by the Office; and

"(ii) the order or decision is issued in an appeal brought pursuant to section 7513(d) of title 5 (as applied with respect to the Postal Service under paragraph (4) of this subsection).

"(B) In addition to the named respondent, the Merit Systems Protection Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.".

(b)(1) The amendments made by subsection (a) shall be effective after the expiration of the 30-day period beginning on the date of the enactment of this Act.

(2) An action which is commenced under section 1005(a)(1)(B) of title 39, United States Code, before the effective date of the amendments made by subsection (a) shall not abate by reason of the enactment of this Act. Determinations with respect to any such action shall be made as if this Act had not been enacted.

STATEMENT OF DAVID H. CHARTERS

SENIOR ASSISTANT POSTMASTER GENERAL, HUMAN RESOURCES GROUP

ON S. 541

BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE

POST OFFICE AND GENERAL SERVICES

COMMITTEE ON GOVERNMENTAL AFFAIRS

APRIL 27, 1987

Mr. Chairman, I am David H. Charters, Senior Assistant Postmaster General, Human Resources Group. I am accompanied here today by Peter Garwood, General Manager of our Employee Appeals Division at Postal Headquarters. We are here to discuss S. 541, which would extend adverse action appeal rights before the Merit Systems Protection Board to a large number of postal employees.

The Postal Service currently has an internal appeals process which affords our nonbargaining employees, including supervisors, managers and postmasters, very similar protections to those which would be provided by S. 541. These procedures are found in Subchapter 650 of the Postal Service Employee and Labor Relations Manual.

Our Subchapter 650 procedures were adopted pursuant to section 1005 of title 39, United States Code. That section authorizes the Postal Service to establish its own appeals procedures for

nonbargaining employees other than preference eligibles. Our current Subchapter 650 procedures are substantially the same as and supersede those formerly codified in Part 444 of the former Postal Service Manual. On judicial review, these procedures were found to afford our employees full due process rights.

The appeals procedures in Subchapter 650 were developed in consultation with the management associations and changes have been made based in part on the recommendations of these associations. These procedures are not static but, rather, reflect a dynamic, evolutionary process involving both the Postal Service and its employees. Over the past year, we have come to recognize that there is a perception by some of our employees that our internal appeals process may not accord them the degree of objective administrative review which they believe can be obtained before other forums. While we believe that this perception is not correct and that our internal appeals process is both fair and equitable, we are currently discussing these concerns with the management associations through the consultative process.

Comparing the Postal Service procedures and title 5 procedures, under both the employee is generally entitled to 30 days advance written notice of the proposed adverse action with the specific reasons for the action stated in the notice. The employee may have the assistance of a representative, and a written decision, with reasons, must be issued. Under postal procedures, the employee has 10 days to respond to the notice of proposed

action, instead of the 7 days allowed under title 5. In addition, our procedures provide that the decision-making official must be higher in authority than the proposing official. There is no similar requirement in subchapter II of chapter 75 of title 5. In fact, under title 5, the proposing and the deciding official may be the same individual.

Postal Service adverse action appeal procedures, while providing much the same basic protections as those afforded under title 5, are more favorable to the employee in several other respects. Postal procedures call for a two-step appeal process. At Step I, the employee is entitled to request a hearing. The hearing is conducted by an impartial hearing officer who has received specialized training in the conduct of hearings and the preparation of a report including the finding of fact. A verbatim written transcript of the hearing is taken by a court reporter or other qualified person. The rules of evidence are not strictly applied, but are used as a guide in the conduct of the hearing. The hearing officers are instructed that their principal function is to ensure that the facts are drawn out fully for the record.

After the issuance of a Step I decision under our procedures, the employee has the right to an appeal on the written record to the Assistant Postmaster General, Employee Relations. Based on the arguments raised by the employee in the appeal, there is a full review of the record of the earlier proceedings, including any determination of fact. In addition, the Postal Service is

generous in extending deadlines for employees to file briefs. Under title 5 procedures, the employee may file a petition for review to the full Merit Systems Protection Board, which has discretion whether or not to accept the appeal. The employee is limited to arguments that there has been an erroneous interpretation of statute or regulation or that new and material evidence is available which, despite due diligence, was not available before. Only in exceptional instances will the Merit Systems Protection Board permit employees to argue the facts at this point in the appellate proceedings.

Over the past 5 years, from 1982 through 1986, the Postal Service processed 235 adverse action appeals on the merits through Steps I and II, on a combined basis. These cases involved appeals from all categories of non-bargaining employees including postmasters, supervisors, managers and others. Of those cases, in 165, or 70 percent, the actions were affirmed, and the rest were reversed or modified. During the same period, the Merit Systems Protection Board issued decisions on the merits in 145 cases involving postal employees. Of those, 97, or 67 percent, were affirmed and the remainder were reversed or modified.

In summary, on a combined basis, approximately 70 percent of cases processed through our procedures were affirmed compared to approximately 67 percent in the MSPB procedure.

Employees may seek judicial review in an appropriate U.S. court of either Postal Service or MSPB adverse action appeal decisions. In our experience, the Postal Service has been upheld by the courts in virtually all of the appeals taken from our internal appeals process.

In regard to the language of the bill, we have two concerns. First, there is a genuine concern and uncertainty about who is covered by the bill as presently drafted. Quite frankly, in addition to creating a situation in which employees may be confused as to what their rights are, this creates a real problem for us since we are required to provide the appropriate appellate rights to employees in letters of decision.

The bill appears to draw its definition of coverage from 39 U.S.C. 1202, which sets certain restrictions to be followed by the National Labor Relations Board for purposes of determining who can not be included in a bargaining unit. Thus the bill would extend its coverage to management officials and supervisors, terms which when read in the context of 39 U.S.C. 1202 may be more restrictive than is consistent with most postal usage. This could produce coverage issues which could not be resolved without determinations of jurisdiction by the Merit Systems Protection Board on a case-by-case basis. Further, there would be a possibility of inconsistencies between the determinations of the Merit Systems Protection Board and the National Labor Relations Board.

In regard to postmasters, it is apparent to us from the floor debate in the House during the passage of H.R. 384, a bill identical to S. 541, that the House intended to cover all postmasters. However, that debate, in reference to all other nonbargaining employees, appeared to predicate coverage on ineligibility to organize collectively into a bargaining unit or to be represented in a bargaining unit. The National Labor Relations Board, the agency designated by the Postal Reorganization Act to make representation determinations for postal positions, has received petitions involving only a small number of positions which are not in the traditional crafts. Therefore, no clear determinations have been made in regard to a significant number of postal positions, many of which might be eligible for organization into a bargaining unit based upon NLRB precedents. Because of the confusion caused by this, we have offered alternative language which would provide coverage to non-veteran preference eligibles until such time that they become covered by a collective bargaining agreement which provides a grievance/arbitration procedure. We remain convinced that appeal procedures will best be administered and will be most easily understood by all if everyone who is not currently covered by a collective bargaining agreement is governed by a single set of rules and standards.

Our second concern involves the mechanism to seek judicial review of decisions of the Merit Systems Protection Board. While we have had a better working relationship recently with OPM on issues for judicial review, we still believe we are

necessarily more familiar with postal laws, rules, and regulations than the OPM, and we are in a better position to know the nature, degree and effect of erroneous interpretations of postal laws, rules, and regulations. Therefore, we would prefer that we be authorized to have the right to approach the U.S. Court of Appeals for the Federal Circuit to seek judicial determinations of these issues.

I will be pleased to answer any questions you may have.

ASSISTANT POSTMASTER GENERAL
Government Relations Department
Washington, DC 20260-3500

June 15, 1987

Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6252

Dear Senator Pryor:

This is in response to your and Senator Ted Stevens' request for additional information for the record on S. 541, a bill which would extend certain adverse action procedural and appeal rights under Chapter 75 of Title 5 to certain employees of the Postal Service.

The requested information is enclosed. In regard to question 4, based upon conversations with Committee staff, we have furnished information for calendar years 1985 and 1986. The Postal Service does not maintain a system of logs in the normal course of business which contain the information requested for the period 1982 through 1986. Compilation of that information would require a manual review of the actual case files, many of which have been placed in records storage.

The list of positions for calendar years 1985 and 1986 is a credible representative sample of the positions held by appellants availing themselves of the procedures set forth in Subchapter 650 of the Employee and Labor Relations Manual. If you have any additional questions, please do not hesitate to contact me on 268-3731.

Sincerely,

William F. Johnstone

Enclosure

1. You indicate in your statement that you are currently working with the management associations to address the concerns which they have with the in-house appeals process. Can you bring us up to date on the status of these talks?

   The Postal Service currently is working with the management associations on an ongoing basis in the development of possible alternative in-house processes. A preliminary proposal has been developed. However, this is still under review by the management associations and Postal Service management and we do not have a timetable for completion at this time.

2. May employees call witnesses to testify in either the in-house postal or the MSPB procedures?

   Postal employees may be called as witnesses to make statements or testify at hearings both through the Postal Service's nonbargaining appeal procedures set forth at Subchapter 650 of the Employee and Labor Relations Manual (ELM) and before the Merit Systems Protection Board (MSPB). Specifically, ELM section 652.243 provides:

   > "Management has an obligation to make available witnesses who are postal employees and approved by the hearing officer as having relevant testimony, unless it is administratively impractical to do so. In these cases, witnesses may be required by the hearing officer to answer written questions."

   Similarly, MSPB regulations, specifically, 5. C.F.R. §1201.33, provide, in pertinent part:

   > "Every Federal agency or corporation shall make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the presiding official."

   Non-federal or non-postal employees may be called as witnesses in both forums. The MSPB regulations provide for the issuance of subpoenas to require the appearance of a witness. 5 C.F.R. §1201.81. The Postal Service's regulations do not have a similar provision.

   Both the hearing officers in the Subchapter 650 procedures and the MSPB administrative judges have the authority to exclude those witnesses whose testimony would be irrelevant, immaterial, cumulative or redundant. See ELM section 652.243; 5 C.F.R. §1201.41(b)(6), (8) and (10).

3. You mentioned in your statement that the Postal Service is "generous" in extending deadlines for employees to file briefs. Can the employee lose a case under in-house process due to late filings? Can the Postal Service lose due to late filings?

In the event that an employee files an appeal which is excessively late or for which he or she cannot show good cause for the late filing, it is possible that the appeal could be dismissed. Also, if either the employee or management fails to file briefs and other documents or pleadings at the times set by the Step I or II officials or the hearing officer, those filings may be rejected unless good cause is shown for an extension of time.

The Postal Service has traditionally been generous with time extensions at both the Step I and Step II levels when we have received requests where good cause is shown. We do not have a rigid timetable for the processing of cases and attempt to accommodate, within reason, the legitimate requests of both the appellant and management for extensions of time.

The letter of decision issued to the employee clearly sets forth the appellate right(s) which are available, the time limitations applicable, and the address(es) to which to direct the appeal(s). It should be noted that all that is required to perfect an appeal to the Step I level is a simple written notice that the employee wishes to appeal and an indication of whether or not the employee wants a hearing. Therefore, it is our experience that it is only rarely that a Step I appeal is filed late. If the employee offers a viable reason for the late filing, we would waive the time limitation so long as the delay in filing is not excessive.

In regard to the hearing, we attempt to arrive at dates that are mutually agreeable to the parties and the representatives. Therefore, we do not hold to a rigid timetable although hearing officers are instructed to conduct the hearing as early as possible.

At the Step II level of appeal, appellants may argue the entire case. As an assistance, they are provided a copy of the transcript of the Step I hearing, the hearing officer's report, and the exhibits when they receive the Step I decision. As a result, we are contacted frequently for extensions of time and have been generous in granting extensions, the lengths of which are determined by the specific circumstances of each case.

4. For the record, please provide a breakdown by employment description indicating the position of employees involved in the 235 adverse action appeals which you cite in your testimony for the 1982-86 period. Please provide specific information on the individuals whom you refer to as "others" in your testimony on page 4, paragraph 2, sentence 2.

For calendar years 1985 and 1986, the position titles of employees involved in adverse action appeals follow:

Postmaster
Superintendent, Window Services
General Supervisor
Superintendent, Postal Operations
Manager, Station and Branches
Supervisor, Delivery and Collection
Manager, Employee Relations
Supervisor, Mails
Sectional Center Director, Finance
Supervisor, Mails and Delivery
Superintendent, Station and Branch Operations
Supervisor, Computerized Mark-up Unit
Superintendent, Support Services
Supervisor, Address Information System
Supervisor, Mechanics
Tour Superintendent
Supervisor, Maintenance
*Postal Inspector
*Postal Operations Specialist
*Injury Compensation Specialist
*Realty Transaction Specialist
*Postal Systems Examiner
*Distribution and Routing Specialist
*Vehicle Operations Analyst
*Address Information Specialist
*Contract Specialist
*Computer Programmer, Senior
*Personnel Assistant
*Women's Program Coordinator
*Arbitration Schedule Coordinator
*Secretary A
*Senior Stenographer
*Senior Typist

Those positions above designated with an "*" would be those to whom I was referring as "others" in my testimony.

NATIONAL LEAGUE OF POSTMASTERS
OF THE UNITED STATES
1023 N. Royal St., Alexandria, VA 22314-1569 • Telephone—(703) 548-5922

STATEMENT OF

RON SWISHER, PRESIDENT

NATIONAL LEAGUE OF POSTMASTERS

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE

AND CIVIL SERVICE

COMMITTEE ON GOVERNMENTAL AFFAIRS

U.S. SENATE

ON S. 541

APRIL 27, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM RON SWISHER, PRESIDENT OF THE NATIONAL LEAGUE OF POSTMASTERS. I AM ACCOMPANIED TODAY BY ED BOWLEY, OUR LEGISLATIVE CONSULTANT. OUR ORGANIZATION REPRESENTS MORE THAN 22,000 POSTMASTERS THROUGHOUT THIS NATION.

MR. CHAIRMAN, WE WANT TO COMMEND AND THANK YOU FOR SCHEDULING THIS HEARING IN SUCH AN EXPEDITIOUS MANNER. MOST IMPORTANTLY, WE THANK YOU FOR SPONSORING S. 541, A BILL THAT WILL GUARANTEE ALL POSTMASTERS AND POSTAL SUPERVISORS A FAIR AND IMPARTIAL HEARING WHEN THEY ARE CONFRONTED WITH ADVERSE PERSONNEL ACTIONS INITIATED BY THEIR SUPERIORS.

MR. CHAIRMAN, WE ARE PLEASED TO NOTE THE SAME BIPARTISAN SUPPORT ON S. 541 AS H.R. 348 ENJOYED IN THE HOUSE OF REPRESENTATIVES WHERE IT WAS APPROVED ON MARCH 3, 1987 UNDER THE UNANIMOUS CONSENT PROCEDURE OF THAT BODY.

WE ARE ALSO DELIGHTED TO REPORT TO YOU THAT 60 OF YOUR COLLEAGUES IN THE SENATE HAVE SEEN FIT TO COSPONSOR S. 541 AND THAT TOTAL DOCUMENTED SUPPORT FOR THE MEASURE EXCEEDS 80 SENATORS, INCLUDING ALL MEMBERS OF THIS SUBCOMMITTEE AS WELL AS THE FULL GOVERNMENTAL AFFAIRS COMMITTEE.

A SIMILAR BILL, S. 2134, OFFERED BY THE DISTINGUISHED SENATOR FROM ALABAMA, MR. HEFLIN, NARROWLY MISSED AN OPPORTUNITY FOR FULL SENATE APPROVAL IN THE CLOSING DAYS OF THE 99TH CONGRESS.

MR. CHAIRMAN, S. 541 WILL PROVIDE POSTMASTERS WITH THE SAME PROTECTION AFFORDED TO COMPETITIVE SERVICE EMPLOYEES, INCLUDING NON-VETERANS, WHEN THEY FACE ADVERSE PERSONNEL ACTIONS INITIATED BY THEIR AGENCIES. THE SAME PROTECTION IS AFFORDED THE BARGAINING UNIT EMPLOYEES OF THE U.S. POSTAL SERVICE IN LIKE CIRCUMSTANCES. S. 541 GUARANTEES EQUITY.

S. 541 WOULD IN NO WAY CHANGE THE EXISTING ADMINISTRATIVE INTERNAL PROCEDURES OF THE U.S. POSTAL SERVICE. THE PROPOSED LEGISLATION WILL GIVE NON-BARGAINING UNIT EMPLOYEES ACCESS TO AN APPEAL "OUTSIDE" THE U.S. POSTAL SERVICE - TO THE MERIT SYSTEMS PROTECTION BOARD (MSPB). WE BELIEVE, MR. CHAIRMAN, THIS CHANGE TO BE FAIR AND REASONABLE, AND LONG OVERDUE.

S. 541 DIFFERS FROM ITS PREDECESSOR HOUSE BILL, H.R. 2854, IN THE PREVIOUS CONGRESS, AS WE HAVE ACCEPTED LANGUAGE SOUGHT BY THE U.S. POSTAL SERVICE, AND APPROVED BY THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE IN 1986, PROVIDING THE POSTAL SERVICE A MEANS OF APPEALING AN MSPB DECISION ESTABLISHING A PRECEDENT RELATED TO USPS RULES AND REGULATIONS. UNDER S. 541, THE POSTAL SERVICE COULD, THROUGH THE OFFICE OF PERSONNEL MANAGEMENT (OPM), APPEAL A PRECEDENT-SETTING MSPB DECISION TO THE FEDERAL COURTS.

FOR THE RECORD, WE WISH TO STATE FROM THE OUTSET THAT OUR INTEREST IN S. 541 IS NOT TO BE CONSTRUED AS CRITICISM OF THE U.S. POSTAL SERVICE, OR A REFLECTION OF UNFAIRNESS OR UNSCRUPULOUS ACTION ON THE PART OF ITS SENIOR MANAGEMENT. WE BELIEVE THAT THE EXISTING SYSTEM, IN THEORY, IS

FAIR; HOWEVER, IN PRACTICE IT HAS OFTEN BEEN UNFAIR AND SOME POSTMASTERS AND SUPERVISORS HAVE SUFFERED UNJUSTLY. WE FURTHER BELIEVE THAT A SYSTEM MUST BE FAIR IN EVERY RESPECT, AND ADMINISTERED EQUITABLY TO ALL OF ITS EMPLOYEES. CURRENTLY, CERTAIN POSTMASTERS AND SUPERVISORS, SPECIFICALLY VETERANS, HAVE APPEAL RIGHTS TO THE MSPB, AND THE REMAINDER DO NOT. THIS IS AN INEQUITABLE SITUATION.

MR. CHAIRMAN, WE WISH TO ESTABLISH SEVERAL FACTS THAT WE BELIEVE CLEARLY PROVIDE THE JUSTIFICATION FOR ENACTMENT OF THIS MEASURE.

* PRIOR TO PL 91-375 (THE POSTAL REORGANIZATION ACT), ALL POSTMASTERS ENJOYED FAIR AND IMPARTIAL HEARINGS ON ADVERSE PERSONNEL ACTIONS THROUGH THE THEN CIVIL SERVICE COMMISSION.

* SINCE THAT TIME, THE U.S. POSTAL SERVICE HAS ONLY PROVIDED VETERANS WITH SUCH EQUITY.

* IT IS ALSO NOTED THAT THE ENSUING YEARS HAVE WITNESSED POSTMASTER RANKS TO NOW INCLUDE A MAJORITY OF NON-VETERANS, MADE UP MOSTLY OF FEMALE POSTMASTERS.

* POSTMASTERS AND SUPERVISORS ARE THE ONLY GROUP OF POSTAL EMPLOYEES WITHOUT THE RIGHT TO JOIN OR FORM A BARGAINING UNIT, WHICH WOULD GUARANTEE THEM APPEAL RIGHTS TO AN OUTSIDE PARTY.

* THE PRESENT POSTMASTER GENERAL HAS RECOGNIZED THE INCONSISTENCIES OF THE POSTAL SERVICE'S INTERNAL ADMINISTRATIVE APPEAL

PROCEDURES BY RECENTLY REVERSING TWO DECISIONS THAT WERE BROUGHT TO HIS ATTENTION. UNFORTUNATELY, THE POSTMASTER GENERAL CANNOT REVIEW EVERY CASE.

THE PRESENT SYSTEM IS DE FACTO SEX DISCRIMINATION AGAINST THE FEMALE POSTMASTERS WHO DO NOT HAVE VETERANS PREFERENCE. THEY DO NOT HAVE THE SAME RIGHTS AND PROTECTION AND PRIVILEGES AFFORDED THE MALE POSTMASTERS BECAUSE OF THE VETERANS PREFERENCE.

COMMENTS ON SOME PAST HISTORY

THE NATIONAL LEAGUE OF POSTMASTERS HAS CONSISTENTLY SUPPORTED CHANGES TO IMPROVE THE INTERNAL ADMINISTRATIVE APPEAL PROCEDURES OF THE UNITED STATES POSTAL SERVICE. JUST AS CONSISTENTLY, UNTIL THE LEAGUE, THROUGH S. 541 AND ITS PREDECESSOR MEASURES, EXPOSED ITS FLAWS, THE USPS HAS REPLIED THAT, "THE CONSENSUS OF HEADQUARTERS AND REGIONAL OFFICIALS WHO ADMINISTER THE NON-BARGAINING DISCIPLINE AND APPEALS PROCESS IS THAT THE PROCEDURES OUTLINED IN SECTION 650 OF THE EMPLOYEE AND LABOR RELATIONS MANUAL (ELM), HAVE GENERALLY PROVEN TO BE MORE WORKABLE THAN, AND EQUALLY AS FAIR AS, THOSE OF THE MERIT SYSTEMS PROTECTION BOARD." AS LATE AS 1984, THE LEAGUE PROPOSED A PILOT SYSTEM WHICH WE CALLED VOLUNTARY ARBITRATION FOR NON-BARGAINING UNITS IN ORDER TO FURTHER PROTECT POSTAL EMPLOYEES NOT COVERED BY THE MERIT SYSTEMS PROTECTION BOARD PROCEDURES. IN RESPONSE, ALTHOUGH THE POSTAL SERVICE REITERATED THAT THEY APPRECIATED THE LEAGUE'S CONTINUAL INTEREST IN IMPROVING OUR NON-

BARGAINING APPEAL PROCESS PROCEDURES, THEY STATED THAT, "IT IS OUR DETERMINATION NOT TO GO FORWARD WITH A PILOT TEST OF YOUR PROPOSED SYSTEM."

HOWEVER, THE ACTIONS OF THIS SUBCOMMITTEE, THE HOUSE, AND THOSE OF THE 99TH CONGRESS ON THIS ISSUE HAVE PROMPTED THE POSTAL SERVICE TO ASK THE MANAGEMENT ORGANIZATIONS TO JOIN WITH THEM FOR THE PURPOSE OF EXPLORING THE DEVELOPMENT OF AN ALTERNATIVE DISCIPLINARY REVIEW PROCESS BASED UPON THE CONCEPT OF "PEER" REVIEW. AT THIS POINT MR. CHAIRMAN, WE WISH TO MAKE IT ABUNDANTLY CLEAR THAT, WHILE THE LEAGUE WILL COOPERATE WITH THE POSTAL SERVICE IN THIS ENDEAVOR, WE WILL NOT ACCEPT ANY ADMINISTRATIVE CHANGES AS A SUBSTITUTE FOR OUR PURSUING A CHANGE IN THE LAW.

WE SUBMIT, MR. CHAIRMAN, THAT IT IS NOT THE LANGUAGE OF PART 650 THAT CAUSES US PROBLEMS, IT IS THE DEFICIENCIES IN THE APPLICATION OF THE PROCEDURES WHICH RESULT IN INEQUITY - AND THIS IS TOTALLY UNACCEPTABLE.

THE POSTAL SERVICE SITS AS JUDGE, JURY AND PROSECUTOR AGAINST EMPLOYEES WHO DO NOT HAVE THE OPTION TO APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD.

IN THE DISTANT PAST, PRIOR TO REORGANIZATION, POSTAL INSPECTORS INVESTIGATED UNSATISFACTORY CONDITIONS AND VIOLATIONS OF LAW AND SOMETIMES DURING THE INVESTIGATION ISSUED LETTERS OF PROPOSED REMOVAL AND SIGNED AND DELIVERED THE LETTERS TO THE POSTMASTER.

SUCH PROCEDURE WAS ELIMINATED BY HAVING THE POSTAL INSPECTOR ISSUE AN INVESTIGATIVE MEMORANDUM TO THE SUPERVISOR (THE DECIDING OFFICIAL), WHO WOULD THEN ISSUE THE LETTER OF PROPOSED REMOVAL. THAT CHANGE WAS BROUGHT ABOUT FOLLOWING A COURT DECISION IN 1963 OF PATTERSON V. UNITED STATES 162 CT. CL. 675. FROM THE MIDDLE 1960'S TO 1970, NON-BARGAINING UNIT EMPLOYEES HAD THE OPTION OF APPEALING TO THE CIVIL SERVICE COMMISSION (REPLACED BY THE OFFICE OF PERSONNEL MANAGEMENT). THAT OPTION WAS ELIMINATED BY THE POSTAL REORGANIZATION ACT OF 1970. CHANGES TO SECTION 650 PREVIOUSLY PROPOSED BY THE LEAGUE, AND MOSTLY REJECTED BY THE POSTAL SERVICE, WOULD HAVE BROUGHT THE ADMINISTRATIVE PROCEDURES OF THE USPS MORE NEARLY IN LINE WITH THOSE OF THE MERIT SYSTEMS PROTECTION BOARD.

FOR DOCUMENTATION ON THIS ISSUE, WE WOULD BE PLEASED TO MAKE COPIES OF OUR 1985 HOUSE TESTIMONY AVAILABLE IF THIS SUBCOMMITTEE BELIEVES IT DESIRABLE.

IT IS NOTED THAT THE POSTAL SERVICE CONSISTENTLY QUOTES THE HEARING OFFICERS TRAINING MANUAL AS AUTHORITY FOR THEIR PROCEDURES AND PRACTICES. PLEASE NOTE, MR. CHAIRMAN, THAT THE HEARING OFFICERS TRAINING MANUAL IS NOT A NUMBERED PUBLICATION OF THE USPS AND HAS BEEN IN USE SINCE THE EARLY 1960'S, PRIOR TO POSTAL REORGANIZATION. ALSO PLEASE NOTE THAT THE POSTAL SERVICE UPDATED THEIR GUIDE FOR HANDLING MSPB CASES AS PUBLICATION EL 604 JUNE 1984, WHICH WAS UPDATED FROM THE JUNE 1981 EDITION. THE MSPB APPEAL ROUTE PROVIDES MORE EXACT PROCEDURES, PROTECTION AND MORE CONSISTENT LIKE PUNISHMENT FOR LIKE OFFENSE. THE ADMINISTRATIVE PROCEDURES OF THE POSTAL

SERVICE OFFERS A WIDE DIFFERENCE AMONG REGIONS BECAUSE IT HAS NO TABLE OF PENALTIES. IN TWO POST OFFICES IN CALIFORNIA IN 1985, ONE POSTMASTER WAS REMOVED FOR AN OFFENSE WHEREAS A NEARBY POSTMASTER WAS REINSTATED AND RETAINED FOR LIKE OFFENSE. THE POST OFFICES WERE JUNCTION CITY, CA AND OLD STATION, CA..

MR. CHAIRMAN, I AM SPEAKING FROM EXPERIENCE. I ATTENDED COMPREHENSIVE HEARING OFFICER TRAINING IN THE LATE 1960'S AND SERVED AS A HEARING OFFICER AND SUPERVISOR OVER ALL HEARING OFFICERS IN MY REGION BEFORE BECOMING A POSTMASTER IN 1972.

ARRANGING FOR THE APPEARANCE OF WITNESSES

THE MERIT SYSTEMS PROTECTION BOARD ISSUES AN ORDER ACKNOWLEDGING RECEIPT OF AN APPEAL TO THE APPELLANT AND TO THE AGENCY WITH A CASE NUMBER. A COPY OF ONE SUCH ORDER WAS ATTACHED TO PREVIOUS TESTIMONY. IT MAY BE SEEN THAT THE INSTRUCTIONS ARE DETAILED AND SPECIFIC AND FAIR TO ALL PARTIES.

WHEN A MSPB HEARING IS HELD, WITNESSES MAY BE OBTAINED FROM THE AGENCY (USPS), WHICH WOULD NOT OTHERWISE BE AVAILABLE AT A POSTAL SERVICE HEARING. THAT IS PROVEN BY THE OBJECTIONS MADE TO WITNESSES AT MSPB HEARINGS. AT A RECENT HEARING IN NASHVILLE, TENNESSEE, THE POSTAL SERVICE OBJECTED TO AN EXPERT WITNESS, A RETIRED DIRECTOR OF FINANCE, APPEARING AT A MSPB HEARING OF A NON-BARGAINING UNIT EMPLOYEE. THE BASIS OF THE OBJECTION WAS THAT THEY HAD THEIR OWN

EXPERT WITNESS, THE CURRENT DIRECTOR OF FINANCE, TO TESTIFY ON PROCEDURES OF THE POSTAL SOURCE DATA SYSTEM. THE APPELLANT'S WITNESS WHO WAS OBJECTED TO WAS THE FORMER DIRECTOR OF FINANCE WHO WAS TO TESTIFY ABOUT THE POSTAL SOURCE DATA SYSTEM. THE WITNESS WAS ALLOWED BY THE MSPB. IF IT HAD BEEN AN INTERNAL POSTAL HEARING, THAT WITNESS WOULD NOT HAVE BEEN ALLOWED.

ANOTHER INSTANCE WHEN WITNESSES ARE DENIED OCCURRED AT A HEARING IN UTICA, NEW YORK WHEN THE POSTMASTER, THE APPELLANT, ASKED THAT A WITNESS FROM THE REGIONAL OFFICE WHO PROCESSED RELOCATION VOUCHERS BE REQUIRED TO APPEAR AND TESTIFY THAT HIS VOUCHER WAS HANDLED DIFFERENTLY FROM OTHER VOUCHERS. THE POSTAL SERVICE DENIED HAVING THAT WITNESS PRESENT OR TO APPEAR AND THE TESTIMONY WAS NOT PLACED IN THE RECORD. THAT POSTMASTER WAS REMOVED. IT IS CONSIDERED THAT HAD THE MSPB BEEN HANDLING THE CASE, THE PENALTY WOULD HAVE BEEN REDUCED FROM REMOVAL TO A MORE APPROPRIATE PENALTY.

IN FURTHER COMMENT AS TO WITNESSES AT A HEARING, DURING AUGUST 1985 IN HOUSTON, TEXAS, THE POSTMASTER'S REPRESENTATIVE FOUND THAT THE DAY BEFORE THE HEARING, THE ADVOCATE FOR THE POSTAL SERVICE HAD VISITED WITNESSES CALLED BY THE APPELLANT AND HAD INTIMIDATED THOSE WITNESSES TO THE POINT THAT THEIR TESTIMONY WAS RELUCTANT AND THAT THEY WERE AFRAID TO TESTIFY. IT WAS REPORTED THAT ONE WITNESS WAS QUESTIONED AS TO HOW LONG SHE HAD BEEN WORKING FOR THE POSTAL SERVICE, WHETHER SHE LIKED HER JOB AND WHETHER SHE WOULD LIKE TO CONTINUE WORKING FOR THE POSTAL SERVICE. UNDER OATH SHE STATED AT THE HEARING THAT SUCH APPROACH MADE HER FEEL LIKE A CRIMINAL.

TO SUMMARIZE, THE POSTAL SERVICE IS VERY RESTRICTIVE ON WHICH WITNESSES ARE ALLOWED TO TESTIFY AND IS VERY UNSTRUCTURED IN ITS HANDLING OF THE INTERNAL APPEAL HEARINGS. TO THE CREDIT OF THE POSTAL SERVICE, ONE RECOMMENDATION PROPOSED BY THE LEAGUE WAS ADOPTED, THAT OF HAVING VERBATIM TRANSCRIPTS, WHEREAS IN THE PAST THE RECORD WAS A SUMMARY PREPARED BY THE HEARING OFFICER.

SELECTION OF HEARING OFFICER

I WAS ABLE TO FURNISH THE FOLLOWING LETTER UNDER DATE OF JULY 24, 1985 AND I QUOTE THE LETTER. "THE USPS AT THE PRESENT TIME IS FOLLOWING A SELECTION PROCEDURE FOR HEARING OFFICERS THAT HAS BEEN IN EFFECT FOR SEVERAL YEARS UNDER REORGANIZATION. THIS PLAN IS TO UTILIZE THE EXPERTISE OF CERTAIN EMPLOYEE AND LABOR RELATIONS (E&LR) PERSONNEL AS HEARING OFFICERS. THESE PEOPLE POSSESS KNOWLEDGE AND SKILLS THAT MAKE THEM A NATURAL CHOICE TO RECEIVE THE SPECIALIZED TRAINING TO BECOME A HEARING OFFICER.

THIS SITUATION, WITH ITS NATURAL STRENGTH, ALSO HAS ITS NATURAL WEAKNESSES. THESE PEOPLE ARE USUALLY LOWER- TO MID-LEVEL MANAGERS WHO ARE TRYING TO PLEASE THEIR SUPERIORS AND THEIR SUPERIOR'S PEERS. THIS DESIRE TO PLEASE SOMETIMES TAKES THE FORM OF DECISIONS THAT AGREE WITH PROPOSALS AND REVIEWS ALREADY MADE IN THE MSCS (MANAGEMENT SECTIONAL CENTERS), DISTRICTS AND POSTAL REGIONS.

UNDER THIS SYSTEM, JUSTICE TAKES A LEAVE OF ABSENCE AND CLEAR

DECISIONS LOOM LARGER THAN FACT. WITNESSES ARE WITHHELD OR ARE ALLOWED SUBJECTIVELY. TESTIMONY IS INTIMIDATED AND DECISIONS MADE BY THE HEARING OFFICER, AND ALL THE WAY TO THE FINAL DECISION MAKER, ARE BASED ON JUSTIFYING, IF NOT RATIONALIZING THE ORIGINAL DECISION.

AS LONG AS AN AGENCY IS ALLOWED TO CHARGE, HEAR AND DECIDE WITHOUT INDEPENDENT AND OBJECTIVE THIRD PARTIES, THE U.S. POSTAL SERVICE WILL NOT PROVIDE ANY SEMBLANCE OF EQUITY FOR ANY POSTMASTER OR SUPERVISOR UNDER CHARGES, UNLESS THAT PERSON IS A VETERAN OR IN SOME OTHER MANNER HAS ACCESS TO THE APPEAL PROCEDURE OF THE MERIT SYSTEMS PROTECTION BOARD."

HEARING OFFICERS ATTEMPT TO MAINTAIN A SEMBLANCE OF FAIRNESS DURING THE HEARING AND AT THE CONCLUSION OF THE HEARING THEY WILL ASK THE APPELLANT IF HE HAD A FAIR HEARING. RESPONSE IS THAT THE HEARING WAS FAIR EXCEPT THAT OBJECTIONS MADE WERE OVERRULED, THAT SOME WITNESSES WERE NOT ALLOWED TO TESTIFY AND THAT SOME EXHIBITS BELIEVED TO BE CRUCIAL BY THE APPELLANT WERE NOT ALLOWED.

SOME CASE HISTORIES

IT IS THE OPINION OF THE NATIONAL LEAGUE OF POSTMASTERS THAT REPRESENTATIVES OF THE POSTAL SERVICE AT THE HIGHER LEVEL AT HEADQUARTERS DESIRE THAT THEIR INTERNAL PROCEDURES BE FAIR AND WORKABLE. HOWEVER, SUCH DOES NOT REACH THE LOWER LEVELS AND THERE IS NO ASSURANCE THAT THE DIRECTIVES ISSUED FROM HEADQUARTERS WILL BE FOLLOWED.

LEGISLATION TO ALLOW THE POSTMASTERS AND OTHER NON-BARGAINING UNIT EMPLOYEES NOT SUBJECT TO THE VETERANS PREFERENCE ACT TO APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD WOULD ASSURE FAIR AND EQUAL TREATMENT WITHOUT REGARD TO THE CHANGE OF HEADQUARTERS PERSONNEL IN THE POSTAL SERVICE. THE MSPB PROCEDURES ARE NOT ALL FORMAL AND LEGALISTIC BECAUSE THEY ALSO HAVE AN ALTERNATE APPEAL PROCEDURE FOR THE LESS COMPLICATED CASES. ON AUGUST 21, 1981, THE THEN SENIOR POSTMASTER GENERAL FOR E&LR, MR. CARL ULSAKER, ISSUED A LETTER TO CORRECT SOME OF THE PRACTICES AND INEQUITIES OF THE FIELD MANAGERS OF THE POSTAL SERVICE. THAT LETTER, A PART OF H.R. 2854 TESTIMONY, HAD ITS IMPACT FOR A SHORT TIME BUT WAS NEVER MADE A PART OF THE PERMANENT INSTRUCTIONS. S. 541 WOULD EXTEND THE UMBRELLA PROTECTION OF THE THIRD PARTY APPEAL SYSTEM ON A PERMANENT BASIS AND WOULD NOT BE SUBJECT TO CHANGE OF PERSONNEL.

ON RARE OCCASIONS THERE IS OUTRIGHT DUPLICITY, DECEIT AND INTENTIONAL FALSIFICATION PRACTICED AT THE SECTIONAL CENTER LEVEL. IN ONE CASE (SUNBRIGHT, TENNESSEE) A POSTMASTER WAS FURNISHED WITH A LETTER OF PROPOSED REMOVAL FOR ALLEGATIONS CONCERNING RURAL ROUTE INSPECTIONS. THE ORIGINAL LETTER OF CHARGES CONTAINED ONE CHARGE IN THE LETTER. ONE OR TWO DAYS AFTER THE LETTER WAS DELIVERED, THE POSTMASTER WAS REQUESTED TO SIGN RECEIPT ON A NEW PAGE TWO AND BACKDATE THE DATE OF RECEIPT AND MAKE IT IDENTICAL TO THE ORIGINAL LETTER DELIVERED. THE POSTMASTER COMPLIED. LATER TO HER SHOCK, SHE FOUND THAT A SECOND CHARGE HAD BEEN ADDED. THE POSTMASTER WAS ARBITRARILY REASSIGNED FROM HER OFFICE TO THE KNOXVILLE, TENNESSEE SECTIONAL CENTER AND REQUIRED TO DRIVE OVER 50 MILES ONE WAY EACH

DAY TO THE SECTIONAL CENTER FOR WORK. THIS WAS DURING THE TIME THE CHARGES WERE PENDING, THAT IS THE 30 DAY NOTICE PERIOD. THE SECTIONAL CENTER IGNORED THE FACT THAT THE POSTMASTER WAS SUBJECT TO THE FAIR LABOR STANDARDS ACT, AND THEREFORE ENTITLED TO OVERTIME PAY.

IF ACCESS TO THE MERIT SYSTEMS PROTECTION BOARD HAD BEEN AVAILABLE TO THE POSTMASTER, SHE WOULD NOT HAVE HAD TO SUFFER MANY OF THE INDIGNITIES AND PUNITIVE MEASURES IMPOSED DURING THE DISCIPLINARY PROCEDURES PRACTICED BY THE SECTIONAL CENTER.

IN ANOTHER CASE, THE POSTMASTER AT GUNTERSVILLE, ALABAMA WAS REMOVED FOR ALLEGEDLY INTERFERING WITH A POSTAL INVESTIGATION. AFTER A MERIT SYSTEMS PROTECTION BOARD HEARING, THE POSTMASTER WAS RESTORED TO HIS POSITION WITH FULL BACK PAY. HAD THE MSPB HEARING NOT BEEN AVAILABLE, THAT POSTMASTER WOULD NOT HAVE BEEN RESTORED TO HIS POSITION, NOR WOULD HE HAVE RECEIVED BACK PAY. A THIRD PARTY HEARING IS ESSENTIAL TO PROTECT NON-BARGAINING UNIT EMPLOYEES. THE POSTAL SERVICE WOULD HAVE HAD NO REASON TO CHANGE THE REMOVAL ACTION ON INTERNAL APPEAL.

AT NASHVILLE, TENNESSEE, A NON-BARGAINING UNIT EMPLOYEE (A SUPERVISOR) WAS PROPOSED FOR REMOVAL FOR FOUR ALLEGED CHARGES INCLUDING TAKING AN EMPLOYEE TO LUNCH AND FALSIFYING HER LUNCH TIME AS FIVE MINUTES INSTEAD OF 30 MINUTES. THE NON-BARGAINING UNIT EMPLOYEE WAS SUSPENDED, TRANSFERRED TO AN OFFICE DISTANT FROM HIS HOME AND REDUCED IN SALARY GRADE. THE POSTAL SERVICE TOOK THE POSITION THAT THE MSPB DID NOT HAVE JURISDICTION ALTHOUGH HE WAS A VETERAN. THEY

ALSO FAILED TO INFORM HIM OF HIS VETERAN APPEAL RIGHTS UNTIL SERIOUS OBJECTION WAS MADE TO THE SECTIONAL CENTER E&LR PEOPLE. EFFORTS BY REPRESENTATIVES OF THE NON-BARGAINING UNIT EMPLOYEE TO ADJUDICATE THE MATTER IN A MORE EQUITABLE FASHION WERE IGNORED AND NO RESPONSES MADE.

AT A MSPB HEARING IN NASHVILLE, TENNESSEE, AT THE PRE-HEARING CONFERENCE, THE MATTER WAS ADJUDICATED AS ORIGINALLY OFFERED BY THE EMPLOYEE WITH THE ADDITIONAL PROVISION THAT THE POSTAL SERVICE WOULD PAY ATTORNEY'S FEES. IT IS OBVIOUS THAT HAD THE APPEAL RIGHTS THROUGH THE MSPB NOT BEEN AVAILABLE, THE EMPLOYEE WOULD HAVE BEEN TRANSFERRED TO AN OFFICE DISTANT FROM HIS HOME AND THAT HIS CAREER WOULD HAVE BEEN PERMANENTLY IMPAIRED. UNDER THE RESOLUTION, THE POSTAL SERVICE AGREED TO WIPE THE RECORD CLEAN AND REMOVE ALL MATERIAL FROM HIS FOLDER. THAT CASE IS A GLARING EXAMPLE OF THE NEED FOR S. 541, BECAUSE WITHOUT THE MSPB, A GRAVE INJUSTICE WOULD HAVE BEEN POSSIBLE.

MR. CHAIRMAN WE OFFER MORE RECENT EXAMPLES IN SUPPORT OF THE EARLY ENACTMENT OF S. 541. CONSIDER THE CASE OF USPS 130 0026, PART 650, BELDEN, MS. ON NOVEMBER 13, 1986, AT A PRE-HEARING CONFERENCE, A SETTLEMENT WAS REACHED WHICH INCLUDED TRANSFER OF THE POSTMASTER TO TUPELO, MISSISSIPPI AS A CLERK, HAVING ALL RIGHTS FOR ANY FUTURE JOB OPPORTUNITIES, PURGING THE RECORD "TOTALLY, COMPLETELY AND FOREVER", AND NEVER MAKE REFERENCE TO THE CHARGES, PLUS PAYMENT OF ATTORNEY FEES IN THE AMOUNT OF $4,500.00 TO BE PAID WITHIN 30 DAYS. THE APPEAL WAS FOR REMOVAL FROM THE POSTAL SERVICE AS POSTMASTER.

AS OF FEBRUARY 10, 1987, THE FEES HAD NOT BEEN PAID AND THE AGREEMENT WAS SUBVERTED BY REFERENCE TO THE CHARGES ON FORM 991, APPLICATION FOR PROMOTION. CLEARLY, THE POSTMASTER COULD NOT HAVE BEEN GUILTY OF THE CHARGES TO THE EXTENT OF A "PREPONDERANCE OF THE EVIDENCE". EVEN UNDER PART 650, WHICH IS JUDGE AND JURY FOR THE POSTAL SERVICE, THE POSTMASTER'S CASE HAD MORE WEIGHT OF EVIDENCE THAN THE AGENCY. HOWEVER, THE SETTLEMENT WAS ACCEPTED AND AGREED UPON BECAUSE IN THE OPERATION OF A HEARING AS PRACTICED UNDER PART 650, THE REMOVAL WOULD HAVE BEEN SUSTAINED. EVEN THE HEARING OFFICER LED THE POSTMASTER AND HER REPRESENTATIVE TO BELIEVE THAT REMOVAL WOULD BE THE RESULT IF AN AGREEMENT WAS NOT REACHED.

APPEAL TO THE MSPB WAS NOT AVAILABLE, OTHERWISE THAT IMPARTIAL FORUM WOULD HAVE BEEN USED. THE POSTMASTER WAS NOT A VETERAN, AND DOES NOT HAVE PREFERENCE ELIGIBLE STATUS. AS EVIDENCED BY THE FEES AND THE AGREEMENT, UNDER AN MSPB APPEAL, THE POSTMASTER WOULD PROBABLY NOT HAVE BEEN FORCED TO TAKE A REDUCTION FROM POSTMASTER. THIS IS AN EXAMPLE OF THE PRESSURE TO REACH ANY SORT OF AGREEMENT TO SETTLE CASES RATHER THAN FACE CERTAIN REMOVAL AND LOSS OF EMPLOYMENT, EVEN WHEN THE SUBJECT HAS EVIDENCE ON THEIR SIDE. ENACTMENT OF S. 541 WOULD GIVE EQUAL PROTECTION UNDER THE LAW FOR THE MAJORITY OF POSTMASTERS WHO ARE NON-VETERANS.

IN THIS CASE, THE POSTAL SERVICE IS NOT LIVING UP TO ITS OWN AGREEMENT. UNDER THE MSPB, AN ORDER WOULD HAVE BEEN ISSUED FOR COMPLIANCE. MSPB GIVES TEETH TO FORCE COMPLIANCE ON THE PART OF THE AGENCY.

THE POSTMASTER OF PORTER, TEXAS WAS REMOVED FROM THE POSTAL SERVICE IN APRIL, 1985. REMOVAL WAS APPEALED UNDER PART 650 AND A HEARING WAS HELD BY THE POSTAL SERVICE.

THE BASIS OF THE REMOVAL ACTION WAS A WORK-RELATED INJURY TO THE POSTMASTER'S LEFT ANKLE WHEN A STACK OF BUNDLES OF MAGAZINES AND CIRCULARS FELL FROM A TABLE AND HIT HER ANKLE. THE POSTAL SERVICE ALLEGED THAT THE INJURY WAS NOT WORK-RELATED.

UPON BEING ORDERED TO UNDERGO A PHYSICAL EXAMINATION, THE POSTMASTER WENT TO DR. EUGENE A. ELLINGTON WHO ADMINISTERED A PELVIC EXAMINATION FOR THE ANKLE INJURY. THIS WAS ALSO BROUGHT OUT AT THE HEARING. UNDER PART 650, THE REMOVAL WAS AFFIRMED BY THE POSTAL SERVICE. POSTAL SERVICE MEDICAL OFFICER H. F. HERMIDA RECOMMENDED DR. ELLINGTON, WHO IS NO LONGER USED BY THE POSTAL SERVICE.

THE POSTAL SERVICE SERVED AS INVESTIGATOR, PROSECUTOR, TRIER OF THE CHARGES, AND DECISIONMAKER. SINCE THAT HEARING, THE PRESIDING HEARING OFFICER HAS NOT BEEN ASSIGNED ANY ADDITIONAL CASES, ALLEGEDLY BECAUSE THE HEARING OFFICER MADE IT KNOWN THAT THE POSTAL SERVICE HAD A WEAK CASE AND PROBABLY COULD NOT PREVAIL IN ANOTHER FORUM.

THIS POSTMASTER WAS NOT A VETERANS PREFERENCE ELIGIBLE AND COULD NOT APPEAL TO THE MSPB. THE AGENCY DID NOT PROVE ITS CASE UNDER 650 BY PREPONDERANCE OF EVIDENCE. IF A MSPB APPEAL HAD BEEN AVAILABLE, WE BELIEVE THAT THE POSTMASTER WOULD HAVE BEEN RETURNED TO HER JOB.

CURRENT STATUS IS THAT THE CASE HAS BEEN FILED IN U.S. DISTRICT COURT AND THE JUDGE HAS TAKEN A MOTION FOR SUMMARY JUDGEMENT FOR HIS LATER OPINION AND DECISION. SUCH HAS BEEN PENDING SINCE SEPTEMBER, 1986. THIS DEMONSTRATES ANOTHER PROBLEM OF THE 650 PROCEDURES: BECAUSE OF THE SOMETIMES GROSSLY UNFAIR JUDGEMENTS, THESE CASES END UP IN EEO OR IN THE FEDERAL COURTS MUCH MORE FREQUENTLY THAN THEY WOULD IF THE MSPB APPEAL ROUTE WERE AVAILABLE TO ALL POSTMASTERS. PURSUING COURT ACTION IS EXTREMELY EXPENSIVE FOR ALL PARTIES.

THIS MATTER WOULD HAVE BEEN RESOLVED BY A THIRD PARTY IF IT COULD HAVE BEEN APPEALED TO THE MSPB LONG BEFORE THE PRESENT TIME. THOSE CASES ARE HANDLED IN ABOUT 120 DAYS. COST TO THE POSTMASTER AND EVEN TO THE USPS WOULD HAVE BEEN MUCH LESS. AS MATTERS NOW STAND, ATTORNEY'S FEES WILL BE PAID TO THE POSTMASTER IF A FAVORABLE DECISION IS RECEIVED BY THE COURT.

SOME FURTHER EVIDENCE OF UNFAIRNESS IS GLARING IN MILLER VS. USPS, IN WHICH A PROPOSED REMOVAL WAS REDUCED TO A TWO WEEK SUSPENSION. EVERY POINT IN THE CASE WAS REFUTED, BUT MANAGEMENT WOULD NOT REVERSE ITS MODIFICATION. IN DUNCAN VS. USPS, A DOWNGRADE OF 4 LEVELS WAS ORDERED, AFTER 4 OF 5 CHARGES WERE REFUTED - BUT MANAGEMENT TOOK ONLY EXCERPTS FROM THE TRANSCRIPT TO SUPPORT THEIR CASE AND IGNORED TESTIMONY THAT WOULD SUPPORT THE APPELLANT. IN ARMSTRONG VS. USPS, A SEVEN DAY SUSPENSION WAS MODIFIED TO A ONE DAY SUSPENSION FOR FAILURE TO ANSWER OFFICIAL CORRESPONDENCE. THIS RELATIVELY SIMPLE AND MINOR CASE HAS TAKEN TO DATE 120 DAYS SINCE THE HEARING AND STILL NO DECISION HAS BEEN MADE.

THE NATIONAL LEAGUE OF POSTMASTERS HAS MADE A NUMBER OF EFFORTS TO OBTAIN STATISTICS FROM THE POSTAL SERVICE AS TO THE POSTMASTER APPEALS WHICH WERE AMENDED OR OVERTURNED BECAUSE OF THE POSTAL APPEAL HEARING SYSTEM. NO RESPONSE HAS BEEN MADE. BY EXPERIENCE THROUGH THE YEARS, THERE HAVE BEEN TWO KNOWN CASES THAT THE POSTAL SERVICE OVERTURNED OR AMENDED ON APPEAL TO THE REGIONAL POSTMASTER GENERAL. THEREFORE, THE STATISTICAL RECORD IS AN ESTIMATED 99.44% IN FAVOR OF THE POSTAL SERVICE WITH THE DIFFERENCE OF .66% BEING IN FAVOR OF THE EMPLOYEE. THE LAST STATISTICS AVAILABLE OF THE RESULTS OF THE MSPB HEARINGS HAS BEEN ABOUT AN AVERAGE OF 51% OF DECISIONS IN FAVOR OF THE EMPLOYEE WHERE THE CHARGE WAS EITHER DISMISSED OR AMENDED, AND 49% OF DECISIONS IN FAVOR OF THE AGENCY. DECISIONS BY THE MSPB HAVE HAD AN IMPACT ON THE POSTAL SERVICE IN THAT THE POSTAL SERVICE FOLLOWS IN THEIR ADMINISTRATIVE APPEALS THE BASIC PRINCIPLES OF THE DOUGLAS V. VETERANS ADMINISTRATION WHEN SUCH SUITS THEIR DESIRES AND NEEDS.

BRIEF COMPARISON OF POSTAL INSTRUCTIONS CONCERNING INTERNAL APPEALS AND MSPB APPEALS

THE MSPB HAS A NUMBER OF REQUIRED STEPS TO PROTECT THE FAIRNESS OF THE APPEAL. THE HEARING IS FORMAL, IT HAS A SYSTEM OF CASE LAW AND CASE PRECEDENT AND ALL PARTIES RECEIVE THE SAME INSTRUCTION.

THE USPS GIVES NO CASE PRECEDENT, NO CONSISTENT PENALTIES AND DIFFERENT DECISIONS FOR LIKE OFFENSE.

THE MSPB HEARING OFFICER WILL ISSUE A DECISION WHICH IS SUBJECT TO REVIEW AT A HIGHER LEVEL.

THE POSTAL HEARING OFFICER ISSUES NO RECOMMENDATIONS AND NO DECISION, BUT AN ALLEGED SUMMARY OF FACTS FOR HIGHER LEVEL DECISION BY THE SAME ORGANIZATION THAT ISSUED THE REMOVAL IN THE FIRST PLACE. THE POSTAL SERVICE HAS DETAILED INSTRUCTIONS FOR HANDLING MSPB CASES BECAUSE OF THEIR FEAR OF BEING OVERTURNED ON APPEAL. THE INSTRUCTIONS FOR INTERNAL APPEAL HEARINGS ARE CONTAINED IN THE HEARING OFFICERS TRAINING MANUAL, WHICH HAS NOT BEEN REVISED OR UPDATED SINCE POSTAL REORGANIZATION.

GENERAL COMMENTS

IT HAS BEEN OBSERVED THROUGH PRACTICE THAT, GENERALLY, THE POSTAL SERVICE IS MORE READY TO RESOLVE CASES WHICH MAY GO TO THE MSPB THAN THOSE WHICH MAY NOT APPEAL TO THE MSPB. IT ALSO HAS BEEN OBSERVED THAT A SLIGHT MAJORITY OF THOSE APPEALED TO THE MSPB RESULT IN REVERSAL OF THE AGENCY OR IN AN AMENDED PENALTY.

S. 541 WOULD THEREFORE RESULT IN A SAVINGS FOR THE POSTAL SERVICE BECAUSE OF CREATING A CLIMATE CONDUCIVE TO RESOLVING THE CASES AT A LOWER LEVEL. ADDITIONALLY, FEWER CASES WOULD BE LIKELY TO GO TO EEO OR TO THE COURTS.

S. 541 WOULD ALSO CORRECT DISCRIMINATION AGAINST THE FEMALE

POSTMASTERS WHO DO NOT HAVE ACCESS TO THE MSPB THAT MANY OF THEIR MALE COUNTERPARTS HAVE, AND THEREFORE RECEIVE UNEQUAL TREATMENT WHEN IT COMES TO ADVERSE ACTIONS.

S. 541 WILL PROVIDE A THIRD PARTY APPEAL TO ADJUDICATE DISCIPLINARY APPEALS WITHOUT THE STIGMA OF HAVING THE PROSECUTOR AND DECISION MAKER BE ONE AND THE SAME ORGANIZATION AND PARTY.

S. 541, WE REPEAT, WOULD IN NO WAY CHANGE THE INTERNAL APPEAL PROCEDURES OF THE USPS, AND THOSE DESIRING TO SELECT THAT ROUTE OF APPEAL WOULD STILL HAVE IT AVAILABLE.

S. 541 WILL MAKE THE FIELD MANAGERS ACCOUNTABLE AND WILL PRECLUDE THE COVER-UP OF DECEIT AND DECEPTION WHICH OCCURS IN RARE INSTANCES. IN ADDITION TO THE FORMAL APPEAL PROCEDURE, THE MSPB HAS A VOLUNTARY EXPEDITED APPEAL PROCEDURE WHICH MAY BE USED TO RESOLVE THE MOST PART OF THE LESS COMPLICATED CASES. SUCH WOULD BE A SAVINGS TO THE USPS AND IN THE COST OF THE DISCIPLINARY PROCEDURES.

IF THE POSTAL SERVICE IS AS INTERESTED IN PROTECTING EMPLOYEE RIGHTS AND THE FAIR APPEAL SYSTEM AVAILABLE TO EMPLOYEES AS IT SAYS IT IS, HOW CAN THE POSTAL SERVICE THEN OBJECT TO PROVIDING EQUAL ROUTES OF APPEAL TO ITS MANAGERS? PRESENT INTERNAL POSTAL PROCEDURES ARE DEFICIENT.

S. 541, BY INVOLVING THE MSPB IN THE APPEAL PROCESS, WOULD ELIMINATE THE CURRENT PRACTICE OF SOMETIMES GIVING A DECISION LETTER BASED ON

INFORMATION NOT IN THE CHARGE.

AT AN ADVERSE ACTION PREVENTION SEMINAR ON AUGUST 26, 1985, OVER 500 POSTMASTERS WHO ATTENDED THE TWO SESSIONS OF THE SEMINAR UNANIMOUSLY STOOD TO SHOW THEIR SUPPORT FOR THEN - H.R. 2854, AND THAT A SYSTEM FOR THIRD PARTY APPEAL RESOLUTION IS SUPPORTED BY EACH AND EVERY ONE PRESENT.

INCLUDED IN THE ADVANTAGES OF HAVING A THIRD PARTY APPEAL, THE MSPB PROCEDURE IS SUPERIOR TO THAT OF THE POSTAL SYSTEM BECAUSE OF ASSURANCE THAT THE APPEAL WILL BE DECIDED AND ADJUDICATED WITHIN ONE HUNDRED AND TWENTY DAYS AFTER THE CASE IS DOCKETED. THERE IS NO SUCH RESTRICTION BY THE POSTAL SERVICE. IN FACT, THE POSTAL SERVICE HAS BEEN KNOWN TO TAKE MANY MONTHS AFTER A HEARING TO ISSUE A FINAL DECISION. THIS RESULTS IN UNDUE HARDSHIP AND STRESS ON THE EMPLOYEE. THE MSPB HAS REGULATIONS TO PROHIBIT EX PARTE COMMUNICATIONS WHICH INVOLVE THE MERITS OF THE CASE OR VIOLATE OTHER RULES REQUIRING SUBMISSIONS TO BE IN WRITING. THE MSPB IMPOSES SANCTIONS IF AN INTERESTED PARTY ENGAGES IN A PROHIBITED EX PARTE COMMUNICATION.

THE MSPB REQUIRES THAT THE AGENCY ESTABLISH THE CASE BY PREPONDERANCE OF EVIDENCE AND THAT THE AGENCY HAS THE BURDEN OF PROOF. THE APPELLANT HAS THE BURDEN OF PROOF WHEN AFFIRMATIVE DEFENSE IS CLAIMED. THE MSPB PROVIDES THAT DISCOVERY MAY BE USED TO OBTAIN RELEVANT EVIDENCE WHICH HAS NOT PREVIOUSLY BEEN PROVIDED. THE POSTAL SERVICE DOES NOT PROVIDE ALL MATERIAL WHICH MAY BE OR HAS BEEN USED AGAINST THE APPELLANT. FAILURE OF ANY PARTY IN THE MSPB

HEARING TO ABIDE BY THE ORDERS OF THE PRESIDING OFFICIAL MAY RESULT IN THE IMPOSITION OF SANCTIONS. THE MSPB MAY ISSUE A SUBPOENA FOR THE ATTENDANCE OF WITNESSES FOR DEPOSITION OR HEARING. THE POSTAL HEARING OFFICER MAY NOT ISSUE SUCH A SUBPOENA.

OTHER MSPB ADVANTAGES

UNDER THE MSPB PROCEDURES, THE INITIAL DECISION OF THE PRESIDING OFFICIAL MAY BE APPEALED TO THE SECRETARY OF THE MSPB, WASHINGTON, D.C.. THE APPEAL MAY BE MADE BY EITHER PARTY. WHEN THE INITIAL DECISIONS ARE UNFAVORABLE TO THE POSTAL SERVICE AND APPEALS ARE MADE TO THE SECRETARY OF THE MSPB, FOR THE MOST PART, THE APPEAL IS BASED ON ALLEGATIONS THAT THE JUDGEMENT OF THE PRESIDING OFFICIAL WAS SUBSTITUTED FOR THAT OF THE AGENCY. ARGUMENT IS MADE THAT THE BOARD'S LANDMARK DECISION IN DOUGLAS V. VETERANS ADMINISTRATION, MSPB DOCKET NUMBER AT075299006 (APRIL 10, 1981) HAS BEEN MISAPPLIED.

THE BOARD HAS CONSISTENTLY HELD THAT, CONTRARY TO THE AGENCY'S ASSERTION, THERE IS NO EVIDENCE THAT THE PRESIDING OFFICIAL TOOK OVER THE AGENCY'S MANAGERIAL ROLE OR CAPRICIOUSLY DISPLACED ITS DISCRETIONARY JUDGEMENT. THE PRESIDING OFFICIAL MAY MITIGATE A PENALTY BASED ON A NUMBER OF CASE DECISIONS, INCLUDING COULTER V. DEPARTMENT OF THE NAVY II MSPB 74 1982. THE PENALTY IS AMENDED BY THE MSPB, ESPECIALLY WHEN THE REMOVAL SANCTION "EXCEEDED THE BOUNDS OF REASONABLENESS" UNDER DOUGLAS, SUPRA AS PREVIOUSLY CITED.

THE POSTAL SERVICE (THE AGENCY) DEMONSTRATES DISFAVOR WITH OPINIONS ISSUED BY THE MSPB NOT ONLY IN THE CASE JUST REFERRED TO, BUT ALSO IN CASE NUMBER MSPB - SF07528510370 MONTANEZ V. USPS, BECAUSE IT DID NOT FAVOR THE DECISION BY THE PRESIDING OFFICIAL. THE MSPB HAS CONSISTENTLY UPHELD ITS AUTHORITY TO AMEND PENALTIES. THE APPEAL BY THE POSTAL SERVICE IN THE MONTANEZ CASE, WHICH ALSO WAS A PART OF OUR TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE IN 1985 HAS NOW BEEN SETTLED. THE POSTAL SERVICE LOST THE APPEAL AND WAS REQUIRED TO RESTORE POSTMASTER MONTANEZ TO HIS POSITION WITH BACK PAY TOTALLING $10,000.00. IT ALSO COST THE POSTAL SERVICE ALL LEGAL FEES AND THE COST OF REPLACING POSTMASTER MONTANEZ PENDING THE OUTCOME OF THE APPEAL.

IN EACH OF THE TWO CASES CITED, THE POSTAL SERVICE HAD CONSISTENTLY REFUSED TO MODIFY THE PENALTY AS ORIGINALLY GIVEN AND THEREFORE THE MSPB HEARING WAS NECESSARY. IT IS OBVIOUS THAT IF APPEAL HAD BEEN MADE TO THE POSTAL SERVICE, THERE WOULD HAVE BEEN NO MODIFICATION AND NO CHANGE BECAUSE OF THE APPEAL BY THE USPS. IF THE APPELLANT HAD BEEN UNABLE TO APPEAL TO THE MSPB, IT IS OBVIOUS THAT THE OUTCOME WOULD HAVE BEEN DETRIMENTAL TO HIS BEST INTERESTS AND TO HIGH STANDARDS OF FAIR PLAY AND EQUAL DISCIPLINE.

S. 541 DOES NOT SEEK ANY PREFERENTIAL TREATMENT FOR NON-BARGAINING UNIT EMPLOYEES. S. 541 HAS THE INTENT AND PURPOSE OF SEEKING EQUAL TREATMENT AND APPEAL RIGHTS FOR NON-VETERAN POSTMASTERS AND SUPERVISORS IN THE POSTAL SERVICE AS GIVEN TO OTHER NON-VETERAN EMPLOYEES IN THE FEDERAL SERVICE. EMPLOYEES WITHOUT VETERANS

PREFERENCE IN AGENCIES OTHER THAN THE POSTAL SERVICE MAY APPEAL TO THE MSPB. MR. CHAIRMAN, YOUR INDULGENCE AND CONSIDERATION IS APPRECIATED AND I WANT YOU TO KNOW THAT THE INTEREST AND INTENT OF THE NATIONAL LEAGUE OF POSTMASTERS IS TO BALANCE THE WHEELS OF JUSTICE, TO PROVIDE THE SAME FAIR TREATMENT TO POSTMASTERS AND SUPERVISORS AS GIVEN TO OTHER FEDERAL EMPLOYEES.

S. 541 IS NEEDED FOR THE WELFARE AND BENEFIT OF OVER 19,000 POSTMASTERS PLUS ALL THE SUPERVISORS WHO ARE NON-BARGAINING UNIT EMPLOYEES IN THE UNITED STATES POSTAL SERVICE WHO DO NOT HAVE THE ADVANTAGE OF APPEAL TO THE MERIT SYSTEMS PROTECTION BOARD.

THE POSTAL SERVICE MAINTAINS AND HAS MAINTAINED IN CONSULTATIVE MEETINGS WITH THE NATIONAL LEAGUE OF POSTMASTERS AND THROUGH THEIR CORRESPONDENCE, THAT THE PRESENT SYSTEM IS WORKING WELL AND THAT THE USPS IS SATISFIED WITH THE SYSTEM. WITHOUT SEEMING TO BE LESS SERIOUS THAN THE OCCASION DEMANDS, I STATE THAT THE POSTAL SERVICE IS SATISFIED WITH THE PRESENT SYSTEM TO THE SAME DEGREE THAT THE FOX IS SATISFIED WITH BEING IN THE HEN HOUSE AND IN CONTROL OF THE SITUATION.

THE NATIONAL LEAGUE OF POSTMASTERS BELIEVES THAT DISCIPLINE IS NECESSARY TO THE MANAGEMENT OF ANY WORKFORCE AND IN NO WAY WOULD ARGUE THAT DISCIPLINE IS NOT REQUIRED. EMPLOYEES SHOULD NOT BE RETAINED BECAUSE OF THEFT OR EMBEZZLEMENT OR OTHER SERIOUS MATTERS OF A PERFORMANCE NATURE. HOWEVER, JUST AS STRONGLY, THE LEAGUE BELIEVES AND SUPPORTS EQUAL ACCESS TO VARIOUS APPEAL SYSTEMS BY ALL POSTAL MANAGERS.

MR. CHAIRMAN, WE ARE AWARE OF S. 523, A BILL SPONSORED BY SENATOR JESSE A. HELMS, THE SENIOR SENATOR FROM NORTH CAROLINA, WHICH WOULD EXTEND COVERAGE OF THE PROVISIONS OF S. 541 TO CERTAIN OTHER POSTAL EMPLOYEES, AND WE WOULD LIKE TO EXPRESS OUR VIEWS ON THAT MEASURE.

FIRST, AND FOREMOST, WE THANK SENATOR HELMS FOR THE INTEREST HE HAS EXPRESSED FOR PROVIDING POSTMASTERS AND POSTAL SUPERVISORS THE SAME FAIR AND EQUITABLE HEARING PROVIDED FOR IN S. 541. HOWEVER, IT MUST BE STATED FOR THE RECORD THAT ONLY NON-VETERAN POSTMASTERS AND POSTAL SUPERVISORS ARE WITHOUT ACCESS TO SUCH A HEARING UNDER EXISTING LAW.

THOSE ADDITIONAL EMPLOYEES EXTENDED SUCH PRIVILEGE UNDER S. 523 ALREADY HAVE ACCESS TO AN IMPARTIAL REVIEW OF ADVERSE ACTIONS THROUGH ARBITRATION PROCEDURES PROVIDED BY COLLECTIVE BARGAINING.

FURTHER, IT IS NOTED THAT SUCH EMPLOYEES HAVE NOT EVIDENCED ANY INTEREST IN THIS MATTER BY PARTICIPATION IN EITHER THE HOUSE OR THE SENATE HEARINGS.

FINALLY, THE LEAGUE WOULD SUPPORT ANY INDIVIDUAL'S RIGHT TO ACCESS TO A FAIR AND IMPARTIAL HEARING ON ADVERSE PERSONNEL CHARGES, AND WE BELIEVE THAT, WITH ENACTMENT OF S. 541, SUCH ACCESS WILL BE AVAILABLE TO ALL POSTAL EMPLOYEES.

AGAIN MR. CHAIRMAN, ON BEHALF OF THE NATION'S POSTMASTERS WHO ARE DENIED EQUITY ON ADVERSE ACTION DECISIONS, I WANT TO THANK YOU FOR

YOUR INTEREST AND SUPPORT, AND TO THANK YOU AND THE MEMBERS OF THIS SUBCOMMITTEE FOR THE EXPEDITIOUS MANNER IN WHICH YOU HAVE CONDUCTED THESE HEARINGS.

WE REQUEST YOUR SUPPORT FOR THE EARLY ENACTMENT OF THIS LEGISLATION, AND WE STAND READY TO ASSIST YOU IN ANY MANNER TO ACCOMODATE THIS REALIZATION. WE WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS.

[redacted] VA [redacted]

NATIONAL ASSOCIATION OF
POSTMASTERS
OF THE UNITED STATES

Hugh Bates
National President

STATEMENT OF

HUGH BATES, PRESIDENT

NATIONAL ASSOCIATION OF POSTMASTERS

OF THE UNITED STATES

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES,

POST OFFICE, AND CIVIL SERVICE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

IN SUPPORT OF S541,

PROVIDING ADVERSE ACTION RIGHTS FOR POSTMASTERS

APRIL 27, 1987

Mr. Chairman and members of the Subcommittee, I am Hugh Bates, President of the National Association of Postmasters of the United States. I am currently on leave from my position as Postmaster in Clanton, Alabama.

I appreciate this opportunity to appear before you today to testify in favor of S.541, which will provide Postmasters and Postal Supervisors with the opportunity to appeal adverse action decisions to the Merit System Protection Board. Senator Pryor, on behalf of the nation's 29,000 Postmasters I would like to thank you for introducing this important legislation into the 100th Congress and for holding these hearings. This bill is extremely important to us because it restores equity and fairness to the adverse-action process.

The House has already approved its version of the bill H.R. 348 by a unanimous voice vote, as it did last year. Unfortunately, the measure failed to clear the Senate in the rush to adjourn last year. We are pleased with the broad bipartisan support S.541 has received and we hope that this year the Senate can consider and pass S.541

The nation's Postmasters are merely attempting to have this benefit restored to them. Before the Postal Reorganization Act of 1970, Postmasters holding a permanent appointment could appeal adverse decisions through several layers of adjudication in the Post Office Department up to their Regional Director, or an appeal could be made to the Civil Service Commission.

The National Association of Postmasters fought to preserve the right to appeal to the Civil Service Commission after reorganization, but the Postal Service decided to give that right only to eligible veterans. Despite appeals to the Postal Service and the Civil Service Commission by the Postmasters, we lost the right to appeal to the Civil Service Commission and, consequently we lost an important protection of fair treatment in the grievance process.

NAPUS has worked hard to restore fairness to the adverse action procedure. My predecessor Tom Costin asked Congressman Dymally to introduce legislation to fix this inequity, the result was H.R. 3854, which was introduced into the 99th Congress and reintroduced into the 100th Congress. My own Senator from Alabama, Howell Heflin, championed our cause last year in the Senate, and we are honored that you Mr. Chairman have chosen to sponsor the bill for us this year.

Adverse actions in the Postal Service are settled in accordance with title 39 section 1005 of the United States Code. Nonbargaining Postal employees such as a Postmaster can request a hearing from the Postal Service to appeal an adverse action. Then the decision of the impartial hearing officer can be appealed to the Assistant Postmaster General for Employee Relations. The Postal Service argues that its process is fairer than the Merit System Protection Board, because unlike the Board, the Postal Service allows an additional level of appeal to the Assistant Postmaster General.

The Postal Service has attempted to create, in theory, as fair a system as possible to address adverse action proceedings. However, the people who bring the charges against the Postmaster and those who judge whether he is guilty or innocent report to the same manager. So it is possible for unfair decisions to occur because of conflicts of interest. As long as the possibility exists, Postmasters and Postal Supervisors will consider the system to be unfair.

The Postal Service claims that the Merit System Protection Board operates in much the same way as the Postal Service's grievance and appeal procedure. The employee's case is heard by three hearing examiners with the possibility of appeal before the entire Board. The Postal Service also maintains that the percentage of decisions affirmed, overturned, and modified is equivalent to its own.

The Merit System Protection Board has one distinct advantage over the Postal Service grievance procedure. It is an independent third party. The federal employee can have his case heard outside of his agency, whereas in the Postal Service hearing officers are subjected to unfair pressures because their superiors are often directly involved in the case. I do not claim that all hearing Officers succumb to this pressure, but even if an impartial decision is rendered against a Postmaster, he will always question its fairness, because the system is tainted. Even if a federal employee believes that the Merit System Protection Board's judgement was not fair, he knows that the system is the best that is available. This is more difficult for us to accept an adverse

judgement knowing that there is a better system provided to other federal employees to adjudicate these matters.

This whole problem is aggravated by the veterans' preference that allows Postmasters who are veterans to appeal to the Merit Systems Protection Board. Because appeal rights are only given to Postmasters who are veterans, the federal laws imply that these rights are a benefit. While I am in favor of providing benefits to veterans who have served their country, all Postmasters serve the country and all of them deserve justice. Excluding some Postmasters from appealing to the Merit Systems Protection Board threatens the morale. Most nonveteran Postmasters are women, a group that has made great contributions to the Postal Service despite special challenges they often face.

If my description of the system is not persuasive enough for changing it, I think some of the following cases make an even stronger argument for reform. The first case warranted a hearing by the House Subcommittee on Postal Personnel and Modernization.

Ms. Robinson, who was both highly rated and highly regarded, was assigned to a Post Office in Paramount, California, where some of her employees, working with her supervisors, brought charges against her. Unaware that those around her were trying to destroy her career, she fully trusted and cooperated with those who were mounting the case against her. The Postal Service took her to federal court on criminal charges, where she was acquitted. Undeterred by this setback, it filed flimsy adverse actions against Ms. Robinson, found her guilty, and fired her. In the process of defending herself she lost, not only her savings

and possessions, but her self esteem. Had it not been for the actions of this Subcommittee, she would never have been cleared of the charges and reemployed by the Postal Service. Because she is not a veteran, she could not appeal to the Merit System Protection Board.

A Postmaster in Iowa was brought up on charges of stealing Postal Service property when he had taken a lawn trimmer to his house to repair it on his own time. He was also charged with sexual harassment, in spite of the fact that the stories of the two women who brought the complaint were inconsistent with each other. Further, he was charged with misappropriation of funds, though they were based merely on accounting errors. In spite of the fact that the Postal Inspection Service violated rules in the process of making its weak case against him, he was found guilty. In this proceeding even the Postal Service lacked faith in the fairness of its system of adjudication, because it chose to settle with the Postmaster and reinstate him in the Postal Service, rather than face an appeal to the Merit System Protection Board.

This reluctance of the Postal Service to go before the Merit System Protection Board is warranted by its failure in the following case. A Postmaster in Texas was accused of sex discrimination and was brought before the Equal Employment Opportunity Commission. His representative from the Postal Service did not tell him that he was entitled to personal counsel, did not provide him with a transcript from the hearing, and did not call any of the female clerks who could have supported the Postmaster's case to testify for him. He was found guilty by the Commission. A subsequent

action was brought against the Postmaster by the Postal Service and he was reduced in level.

Because the Postmaster is a veteran he appealed to the Merit System Protection Board, which found that the Postal Service had violated procedure by giving him inadequate time to respond to the charges made against him. The Board also found that the person deciding the case within the Postal Service cooperated with the prosecutor of the case on legal precedent and sentencing. This particular finding highlights the inability of the system to be impartial, because prosecutors and judges in the system work closely together. The Postmaster was reinstated and has been promoted to the Post of Officer-in-Charge of a Management Sectional Center.

In each of these cases the Postmaster was vindicated either by the federal courts and Congress, the willingness of the Postal Service to settle, or its inability to win a case before the Merit Systems Protection Board. There is another shocking common denominator. In each case the Postal Inspection Service eagerly cooperated with a disgruntled subordinates to bring charges against Postmasters. We are being attacked by an alliance of our superiors and subordinants, which totally undermines our authority for fear of reprisal against us. In the first two cases the record specifically mentions attempts by Postmasters to improve office procedures and efficiency. I am sure there are Postmasters who are concerned about rocking the boat in their Post Offices because their employees could trump up charges against them.

The casualty of the current system of adjudication is morale.

Postmasters who have been found guilty in a grievance proceeding will always believe that they could have been treated fairer if they could have appealed to the Merit Systems Protection Board. Even those who are not involved in adverse actions feel that they, or their fellow Postmasters, will not be treated justly. The National Association of Postmasters feels so strongly about this issue that at its 81st National Convention it unanimously passed a resolution endorsing this bill. Unfortunately adverse action cases will probably always occur. We only want to have confidence that the system will be fair as possible.

Mr. Chairman, I would also like to comment on another bill that would provide Merit System Protection Board appeal rights to Postmasters; S.523. We appreciate the efforts of Senator Helms on our behalf. However, S.523 also extends Merit System appeal rights to employees who already have access to arbitration through collective bargaining. This problem is further compounded by the fact that not all of those eligible for collective bargaining would be eligible for appeal rights under S.523. Employees eligible for these rights under the bill have not expressed an interest in having them and therefore does not justify creating an inequity in the ranks of those eligible to bargain collectively, in order to resolve the inequities in the ranks of those who are not eligible to bargain collectively.

We hope that the coverage of this legislation includes Post Offices that are staffed only by the Postmaster. There is a discrepancy because though they are considered to be managers they do not have employees working for them. The House has made

it clear that these Postmasters are included in the bill and we would appreciate it if the same could be done in the Senate.

Again, thank you Mr. Chairman and members of the Subcommittee for holding these hearings on S.541, and for inviting me to express the views of the National Association of Postmasters of the United States on this important legislation. I will be happy to answer any questions that you might have on the subject.

# #

NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

National Headquarters
490 L'ENFANT PLAZA, S.W., SUITE 3200
WASHINGTON, DC 20024-2120
(202) 484-6070

Office of President
RUBIN HANDELMAN

TESTIMONY BY

RUBIN HANDELMAN, PRESIDENT

NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICE, POST OFFICE

AND GENERAL SERVICE

COMMITTEE ON GOVERNMENTAL AFFAIRS

U.S. SENATE

APRIL 27, 1987

Mr. Chairman, Members of the Subcommittee: My name is Rubin Handelman, President of the National Association of Postal Supervisors, an organization representing some 44,000 mid-level managers in the U.S. Postal Service. With me today is Executive Vice President Vince Palladino and National Secretary Margarete Grant. In the interest of time, I have summarized my remarks but ask that my full statement be printed for the record.

We are grateful for this opportunity to testify on S. 541, a bill to grant Merit Systems Protection Board appeal rights to supervisors and managers in the Postal Service, and sincerely thank you for your leadership on this issue. The need for this legislation is simple -- the current internal disciplinary process is not fair. It places the Postal Service in the role of prosecutor, judge and jury.

First of all, S. 541 would establish equity and fairness for supervisors and managers. Currently, only veterans preference eligibles are allowed to appeal a disciplinary case to the Merit Systems Protection Board. Women are excluded since the vast majority have never served in the armed forces, and any supervisor who was born after 1957 does not qualify as a veterans preference eligible. The Postal Service is quick to point to its record of equal employment opportunity. Yet denying an individual a right primarily on the basis of age or sex is not equal opportunity.

We recognize there are some management employees who would not be covered by S. 541. These employees, by law, have the right to join or form a collective bargaining unit and if they choose to do so, may go the route of arbitration in appealing disciplinary cases. The vast majority of our members, however, are prohibited by law from joining or forming a union and consequently are locked into the current internal disciplinary process.

Recently, the Postal Service expressed concern that many of the people represented by this organization would not be covered. S. 541, as drafted, covers all employees who are either a management official or supervisor. The Postal Service contends there are some positions now represented by NAPS that are not managerial or supervisory in that the employee does not directly supervise other employees.

The issue of who this organization represents and which positions are considered to be managerial or supervisory was settled by the U.S. District Court for the District of Columbia. The court ruled, and the Postal Service, agreed that the positions in question were to be considered managerial for the purposes of NAPS representation. Our contention that employees NAPS represents are covered under this legislation is not speculation, but rather based on solid legal ground which the Postal Service is required to uphold.

We believe S. 541 will help the Postal Service not hurt them. There appears to be a direct correlation in the treatment supervisors and managers are receiving under the Postal Service internal disciplinary process and the number of equal employment opportunity (EEO) cases that have been filed. Many employees out of desparation and frustration are filing EEO cases because they cannot get justice any other way.

In addition, there is a decided lack of continuity in the decisions throughout the country. Postal Service headquarters continues to set policy, but the 74 Divisions created under reorganization have a great deal of latitude in determining not only their own needs for operational purposes but are being allowed to decide how to discipline, promote and treat their employees. This is particularly true when policy is not specific as is often the case which allows for varied interpretation throughout the country.

The second reason why this legislation is necessary is because the current system works against the individual. When a supervisor receives discipline, there are clear and firm guidelines on when that individual must appeal. Unlike the employee who has been charged, there is nothing definite which states the Postal Service must respond within a given number of days and they never lose a case based on delay. That is not the case for the supervisor.

Also, under the ELM 650 process, there is no provision for the payment of legal fees even if the decision is rendered in your favor. In addition, should the supervisor still receive no satisfaction even at the headquarters level, their only recourse is to take the matter to court, again costing the individual a great deal of money.

Too often we find top level management merely reaffirming the decision of their subordinates in a disciplinary case contrary to the facts of the case. The supervisor or postmaster is presumed guilty. The burden of proof is on the individual contrary to our Constitutionally established process of justice.

Recently a case was brought to our attention that clearly shows how unfair this current internal process is and why S. 541 is necessary. I will not read the entire case since the Subcommittee has received a copy of my full statement, but suffice to say, this female supervisor, who was not a veterans preference eligible, was removed from her position on false charges. No one bothered to check the facts of the case, but it was found during her hearing, that she was not responsible for either of the two charges filed against her. Although she was eventually reinstated to her original position, it did nothing to restore her confidence and dignity.

Obviously we are not to the point in the Postal Service now where discipline can be totaled eliminated. But, NAPS believes the Postal Service should consider a far more sophisticated approach such as talking to that individual, providing training if it is necessary and then asking the supervisor to make a recommitment to their jobs and the organization. If a problem still exists, then possibly that individual does not belong in the management ranks.

Our thoughts on discipline, however, do not mean MSPB appeal rights are not necessary. Supervisors and managers in the Postal Service need an outside agency when they are faced with unfair and unwarranted discipline. Your legislation would at least give them a fair chance for justice. I would be happy to answer any questions.

Statement of

THE HONORABLE MERVYN M. DYMALLY
Committee on Post Office and Civil Service
U.S. House of Representatives

before the

Subcommittee on Federal Services, Post Office and Civil Service
Committee on Governmental Affairs

April 27, 1987

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to comment on S. 541, a bill to extend adverse action appeal rights to certain employees of the U.S. Postal Service.

At the outset, I would like to commend Chairman David [illegible]or for his sponsorship of this measure and his efforts to secure timely consideration by the Senate.

Mr. Chairman, I am not surprised that S. 541 already has been cosponsored by a majority of the Senate. As you know, the companion measure in the House was cosponsored by every Member of the Committee on Post Office and Civil Service, and easily passed the House under Suspension of the Rules.

As the original sponsor of H.R. 348, I have had little trouble convincing my colleagues that this bill is simply one of fairness and equal treatment.

During the 99th Congress, when I served for a short time as Chairman of the Subcommittee on Postal Personnel and Modernization, it came to my attention that there were numerous adverse action cases involving postal managers and supervisors which resulted in highly questionable actions being taken against the employee.

After looking at current law, I realized that the problem stemmed from the disparate benefits granted to these employees in adverse action situations.

Postmasters, managers, and supervisory-level employees who are veterans preference eligibles have the right to appeal an adverse personnel action to the Merit Systems Protection Board. Their non-veteran counterparts, which obviously includes most women in these positions, do not.

An adverse action can result in a loss of pay, rank, or job for an employee. If an employee is unfairly accused, or is penalized too severely for the alleged infraction, he or she should have access to an impartial review of that action. Our notions of due process require that a person not be deprived of such important "property rights" without a fair hearing.

Non-veteran postal managers and supervisors are granted an administrative appeal within the Postal Service. Unfortunately, the House Committee on Post Office and Civil Service has found that this internal appeals process is not always impartial, and creates the opportunity for abuse in too many situations.

Mr. Chairman, the problems with the agency appeal procedure -- commonly referred to as the "650 process" -- were cited in great depth before the House Subcommittee on Postal Personnel and Modernization at its hearing on H.R. 348.

During the 99th Congress, that subcommittee also held a field hearing to review actual adverse action cases against Postmasters. The hearing record demonstrates that adverse actions taken against these employees often are inconstistent, overly harsh, or even vindictive in nature. I am convinced that an objective review of an adverse action, conducted by the Merit Systems Protection Board, will go a long way towards eliminating unfair or erroneous adverse action decisions.

Because the Senate Subcommittee on Federal Services, Post Office, and Civil Service will hear testimony on the urgent need for enactment of S. 541, it is not necessary for me to provide a lengthy explanation of why the internal grievance procedure is not serving its intended purpose.

However, Mr. Chairman, I would like to address briefly some issues which have been raised by the Postal Service regarding the intent of Congress in

covering certain groups of postal employees under H.R. 348 and S. 541.

When H.R. 348 was being considered in the House under Suspension of the Rules, a colloquy took place which clarified the meaning of "management official or supervisor", as designated in the legislation.

The clear intent of H.R. 348/S. 541 is to extend M.S.P.B. appeal rights to non-veteran postal employees who do not have the right, under Title 39, U.S.C., to join a bargaining unit. This intent has been stated time and again by the sponsors and supporters of the legislation.

Within the Postal Service, certain groups of employees are represented by collective bargaining units. These bargaining units are available to represent employees in adverse action cases, through grievance procedures and binding arbitration. Even though certain individual employees, or groups of employees, have chosen not to join one of the exclusive bargaining units recognized by the Postal Service, all employees not covered by H.R. 348/S. 541 are eligible to join such a bargaining unit. In certain crafts, employees who are not actually members of the recognized union are still represented by the bargaining unit.

Postmasters, other management level officials, and postal supervisors are among the employees who are not eligible, under any circumstances, to join, or be represented by, a bargaining unit. These employees are represented by management organizations which enter into consultations with the Postal Service, pursuant to Title 39, on issues such as pay, benefits, and working conditions.

The National League of Postmasters, the National Association of Postmasters of the United States, and the National Association of Postal Supervisors, are three of the recognized management organizations. All postal employees who are eligible to join, or be represented by, these organizations, are covered under H.R. 348/S. 541.

The Postal Service has raised the question of whether Postmasters in one-person Post Offices are covered under the definition of "management

official". I do not think the intent of Congress could be any clearer. These Postmasters belong to one of two management organizations. They perform managerial-type duties. They are not eligible to be represented by a bargaining unit. If there is a question as to their coverage under our legislation, let me dispel that doubt: our intent is to cover all Postmasters under H.R. 348/S. 541.

Questions have also been raised as to the status of certain employees who are members of the National Association of Postal Supervisors. It is my understanding that previous judicial opinions have addressed the question of whether certain employees lacking the actual title of "supervisor" are eligible to be members of, and to represented by, this management organization. An employee who belongs to the National Association of Postal Supervisors is not eligible to be represented by a bargaining unit. These employees are covered under H.R. 348/S. 541.

Mr. Chairman, I regret to say that I am not pleased with the approach of the Postal Service toward this legislation.

I fully understand that the Postal Service opposes the bills because it believes the "650 process" is fair and workable. I have no quarrel with the agency's right to argue its position on the merits.

I am a firm believer that "if it ain't broke, don't fix it", which I think fairly characterizes the Postal Service's position on this legislation. Of course, my position is that it is broke and it needs fixing. But I am fully prepared to debate the merits of this argument with Postal officials.

What I do not like are the attempts by the Postal Service to garner opposition to the legislation by misstating the clear intent of the sponsors of the legislation, thereby creating confusion and concern about the coverage of the bills.

The House and Senate have tried to make very clear their understanding on who is covered under the language of the bill, as drafted. Questions as to the

exact definition of employees covered under the bill should be worked out with the sponsoring Members or Senators, not employed as a tactic to delay action on the legislation.

My feeling is that the Postal Service has been unable to convince enough Members that the bill is not needed. This is the substantive issue and the Postal Service is free to try and build its case in opposition to the bill based on the need for an alternative avenue of appeal. But having been unsuccessful on this front, I believe it is highly unfair to create confusion under the guise of being concerned about coverage for certain employees. It is unfair to Members and Senators who have cosponsored the bills for substantive reasons and unfair to the employees who legitimately state a need for the legislation.

Mr. Chairman, I hope my clarifications as to the intent of the House have been helpful to your deliberations. Again, I commend your efforts on S. 541, and I urge prompt action by the Senate on this legislation.

TESTIMONY OF THE HONORABLE JESSE HELMS
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES

APRIL 27, 1987

Mr. Chairman, thank you for giving me the opportunity to testify before your Subcommittee. After giving a brief history of the issue, I will address several problems that I see with the pending bill, S.541, and why I believe that my bill, S.523, is the preferable approach to give Postmasters a right to appeal adverse personnel actions to an outside, independent entity.

In the 99th Congress, the distinguished members of this Subcommittee determined that the current internal disciplinary system of the Postal Service gives the appearance of unfairness and should be modified. This was because the system provides for no review by an independent, outside entity. The only groups that currently have a right to appeal to an outside entity are veterans, who can appeal to the Merit Systems Protection Board, and employees represented by a union, who have access to binding arbitration.

The National League of Postmasters called this lack of outside review "a lack of basic due process rights regarded as essential in the American legal system." My good friend

and distinguished colleague from Alabama, Senator Heflin, stated that in his judgment, "it is inherently unfair for an employee to defend against a serious disciplinary action through a strictly internal review process." He also stated his view that it "is important to provide this right across the board."

Mr. Chairman, if, in fact, postal employees face such an unfair system, Congress has a responsibility to correct it. In the 99th Congress, Senator Heflin, along with others, introduced a bill (S.2134) which would have extended to "supervisor and managerial employees" the right to appeal adverse personnel actions to the Merit Systems Protection Board. It was explained to me that the bill would have extended the appeal right only to Postmasters and certain managerial personnel -- not to Postal Inspectors or clerical employees. When my staff couldn't find a valid justification for this distinction, I proposed an an amendment so the appeal right would extend to all postal employees.

The League of Postmasters, Senator Heflin and Congressman Dymally, the sponsor of the House version of the bill, all agreed to my amendment. Unfortunately, a hold was placed on it in the closing hours of the session. Otherwise, all Postmasters and other non-bargaining unit employees would currently have the option to appeal adverse personnel actions to the Merit Systems Protection Board.

Mr. Chairman, we both know that the Postmasters have fought very hard to have this appeal right extended to cover them. Both S.541 and S.523 would accomplish this. However, they take different approaches. Let me point out a few reasons I think we should follow the approach taken in S.523.

S.541 would extend the Merit Systems Protection Board appeal right to anyone who is "a management official or supervisor in the Postal Service, or an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity. . . ." This language is taken from 39 U.S.C. 1202, the section of the Postal Service Reorganization Act that determines which employees may join a collective bargaining unit. That section is patterned after the Labor Management Relations Act as interpreted by the National Labor Relations Board. By using this language, S.541 is designed to extend the Merit Systems Protection Board appeal right only to postal service employees who are prohibited from collective bargaining.

Mr. Chairman, I believe there are a couple of serious problems with this approach. First, it is not always easy to determine who is prohibited from collective bargaining, as anyone familiar with the decisions of the National Labor Relations Board will attest. While the language in the bill would probably cover most Postmasters, it is by no means

clear that it would cover all of them. It is also unclear what particular groups, if any, within the Postal Service would be excluded from coverage of the bill.

The reason for this uncertainty is because the National Labor Relations Board, in determining who may enter into collective bargaining agreements, has made it clear that an employee's title alone does not determine whether the employee is a "management official or supervisor" and thus excluded from collective bargaining.

Let me offer a few examples which demonstrate the confusion that could arise if S.541 is enacted:

Would a payroll supervisor at a Postal Service data center be able to appeal to the Merit Systems Protection Board under S.541? He is a supervisor and thus would appear to be included within the language of the bill. Yet, the National Labor Relations Board has ruled that payroll supervisors at postal data centers are not supervisors within the meaning of the Labor Management Relations Act. That means they could join a collective bargaining unit and therefore would not have a right to appeal to the Merit Systems Protection Board.

What about engineers within the Postal Service Research and Development Department who act as program managers?

Would they be able to appeal to the Merit Systems Protection Board under S.541? It appears so, since they are managers. Yet, the National Labor Relations Board has held that they are not "managerial employees" within the meaning of the Labor Management Relations Act. Therefore, they too would be unable to appeal to the MSPB under S.541.

What about attorneys located in headquarters? Are they "management officials or supervisors"? Some probably would be, some wouldn't. There is no way to know for any given individual. A determination must be made on each case. Therefore, under S.541, many employees would have no way of knowing what their rights are until they try to appeal to the Merit Systems Protection Board and a determination is made whether they are "management officials or supervisors."

Mr. Chairman, because of this concern, I wrote to the Chief Postal Inspector, Mr. Charles R. Clauson, to ask his opinion of how S.541 and S.523 would affect Postal Inspectors. Without objection, I ask that a copy of my letter to Mr. Clauson and a copy of his response be included in the record.

S.523 takes a different approach. It would establish a simple, bright-line test for determining the appeal rights for each and every employee. As under S.541, if an employee is represented by a collective bargaining agent, the employee

has a right to binding arbitration and would not be able to appeal to the Merit Systems Protection Board. However, all non-bargaining unit employees, including Postmasters, would be able to appeal to the Merit Systems Protection Board. It is as simple as that.

The appeal rights for each employee would be clear. No costly case-by-case determination would have to be made. And at a time when we hear talk of proposed postal rate increases, who wants to introduce a procedure which is likely to increase administrative costs for the Postal Service?

But let's overlook, for a moment, the uncertainty that will exist if S.541 is enacted. Let's assume that the appeal right is extended only to Postmasters. This leads to the second problem with the bill.

If only Postmasters and veterans are allowed to appeal to the Merit Systems Protection Board, there will be approximately 10,000 employees, mostly Postal Inspectors, clerical personnel, and all other employees who have decided not to join a union, who will remain under this internal review system -- a system which the members of this Subcommittee have determined to be so unfair.

Does that make sense from a management viewpoint? What does a supervisor or manager say when an employee asks, "if

this system is so unfair, why didn't Congress correct it for me?"

"Well, they could have," will be the response, "but they decided that you should join a union if you don't like the system."

"What if I don't want to join a union?"

"Tough luck. You're stuck!"

Now what kind of manager or supervisor would treat his or her people that way? How can Congress tell a group of federal employees that we will remedy an unfair system for some, but the rest of you have to join a union to get relief? Doesn't it make more sense to simply correct the problem for all employees and establish clearly who has the right to appeal to the Merit Systems Protection Board?

Let me make it perfectly clear that my bill doesn't affect an employee's right to join a union one iota. If they want to join a union, fine. By all means, they should be free to exercise that right. But, Mr. Chairman, they should also be free to exercise the right not to join a union without being discriminated against.

Would we condone management if they gave a pay increase or increased vacation benefits only to Postmasters and told other employees to join a union if they want the same benefits? Of course not. Yet I think we will be making a more egregious error in this case, because we are dealing not with simply a benefit, but with a fundamental right -- a fundamental right of each employee.

Mr. R. Vern Hambright, former President of the National League of Postmasters testified last year before the House Subcommittee on Postal Personnel and Modernization. He stated that the current internal review system has often been unfair. He said, "We believe that a system must be fair in every respect, and administered equitably to all of its employees." Mr. Hambright went on to challenge the Postal Service: "If the Postal Service is as interested in protecting employee rights and the fair appeal system available to employees as it says it is, how can the Postal Service then object to providing equal routes of appeal to all non-bargaining unit employees?" (emphasis added)

Mr. Chairman, that is precisely what S.523 would do -- extend the Merit Systems Protection Board appeal right to all non-bargaining unit employees.

Finally, Mr. Chairman, S.523 includes a second part which provides that the Office of Personnel Management may,

at the request of the U.S. Postal Service, appeal certain decisions of the Merit Systems Protection Board to the United States Court of Appeals. This section of the bill will make the Postal Service procedures consistent with the procedures followed for other federal agencies. The specific language was taken from the bill reported out of the Committee last year. It is very similar in scope to the language in S.541, and I would defer to the judgment of the Subcommittee as to which language is most appropriate.

JESSE HELMS
NORTH CAROLINA

United States Senate

WASHINGTON, DC 20510

April 6, 1987

The Honorable Charles R. Clauson
Chief Postal Inspector
United States Postal Service
475 L'Enfant Plaza
Washington, D.C. 20260-3523

Dear Mr. Clauson:

On February 17, I introduced legislation to extend to all postal service employees the right to appeal adverse personnel actions to the Merit Systems Protection Board (MSPB). I enclose (1) a copy of my bill, S.523, (2) a copy of my floor statement on S.523, and (3) a copy of S.541, a similar bill introduced by Senator David Pryor.

Since the Postal Inspectors will be directly affected by these bills, it would be most helpful to know your position on them. If you need additional information, please let me know.

Many thanks and kindest regards.

Sincerely,

Jesse Helms

cc: The Honorable John Glenn
The Honorable David Pryor

Enclosures

CHIEF POSTAL INSPECTOR
Washington, DC 20260-2100

April 16, 1987

Honorable Jesse Helms
United States Senate
Washington, DC 20510

Dear Senator Helms:

In your letter of April 6, 1987, you asked for my position on proposed legislation to extend to certain officers and employees of the Postal Service the right to appeal certain adverse personnel actions to the Merit Systems Protection Board under Title 5, U.S. Code.

S.523, your proposed legislation, would extend coverage to all Postal Inspectors. My reading of S.541 suggests only Postal Inspectors who serve in a management or supervisory capacity would be covered; thus, the majority of our field Inspectors, unless a preference eligible employee, would not be covered by this proposed legislation.

If the Congress sees fit to amend current disciplinary procedures for postal employees, it should extend coverage to all Inspectors, not merely those serving in management or supervisory positions. In my view, this is necessary in the interest of fairness and it simplifies administration of the program.

Thank you for the opportunity to respond to this issue.

Sincerely,

C. R. Clauson

TESTIMONY OF SENATOR HOWELL HEFLIN

MR. CHAIRMAN, I AM DELIGHTED TO BE AN ORIGINAL COSPONSOR OF ALMOST IDENTICAL LEGISLATION WHICH I INTRODUCED IN THE SENATE LAST YEAR. IT WAS ALMOST ENACTED INTO LAW, BUT IT BECAME ENTANGLED IN SOME PROCEDURAL WEBS HERE IN THE SENATE DURING THE WANING DAYS OF THE 99TH CONGRESS. IT PASSED THE HOUSE IN DECEMBER, 1985, AFTER BEING COSPONSORED UNANIMOUSLY BY THE MEMBERS OF THE COMMITTEE ON POST OFFICE AND CIVIL SERVICE. THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS ALSO REPORTED UNANIMOUSLY A COMPANION MEASURE, BUT THE FULL SENATE WAS UNABLE TO ACT ON IT PRIOR TO ADJOURNMENT.

ON FEBRUARY 19, 1987, SENATOR PRYOR, ELEVEN OTHER OF MY DISTINGUISHED COLLEAGUES AND I RESURRECTED THIS LEGISLATION HERE IN THE SENATE. WE FIRMLY BELIEVE THAT IT WILL BECOME LAW DURING THIS CONGRESS. ITS COMPANION LEGISLATION, H. R. 348, WAS INTRODUCED BY MR. DYMALLY IN JANUARY OF THIS YEAR. IT PASSED THE HOUSE, BY VOICE VOTE, ON MARCH 3, 1987. IT IS MY UNDERSTANDING THAT S. 541 COULD BE MARKED UP BY THE FULL SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS AS EARLY AS THURSDAY OF THIS WEEK (APRIL 30TH).

MR. CHAIRMAN, S. 541 WOULD MODIFY SIGNIFICANTLY THE CURRENT PROCEDURES AND APPEAL RIGHTS OF POSTAL SUPERVISORS AND POSTMASTERS, GENERALLY. PRESENTLY, THEY MUST FOLLOW AN INTERNAL REVIEW PROCESS, WITH NO RIGHT OF APPEAL OUTSIDE OF THE POSTAL SERVICE (FOR EXAMPLE, TO THE MERIT SYSTEMS PROTECTION BOARD). IT WOULD BRING THESE NONBARGAINING, NONVETERAN POSTAL EMPLOYEES UNDER THE SAME PROTECTIVE, STATUTORY COVERAGE AS VETERANS (I.E., "PREFERENCE ELIGIBLES") AND FEDERAL EMPLOYEES UNDER CIVIL SERVICE.

MR. PRESIDENT, IN MY PROFESSIONAL JUDGMENT, IT IS INHERENTLY UNFAIR FOR AN EMPLOYEE TO DEFEND AGAINST A SERIOUS DISCIPLINARY ACTION THROUGH A STRICTLY INTERNAL REVIEW PROCESS. THE VERY NATURE OF SUCH A BUREAUCRACY SIMPLY DOES NOT LEND ITSELF TO IMPARTIALITY WHEN AN AGENCY ACTS AS THE PROSECUTOR, JURY, JUDGE, AND THE APPEALS ENTITY. BY ALLOWING NONBARGAINING, NONVETERAN POSTAL SUPERVISORY AND MANAGERIAL PERSONNEL THE SAME STATUTORY, PROCEDURAL AND APPEAL RIGHTS AS MANY FEDERAL/POSTAL EMPLOYEES, WE WILL BE RECTIFYING ANY PERCEIVED AND/OR EXISTING FLAWED INTERNAL REVIEW PROCESS. THIS LEGISLATION WOULD DO JUST THAT. IT WOULD NOT CREATE A NEW ADMINISTRATIVE APPELLATE PROCEDURE,

BUT WOULD MERELY EXTEND THE EXISTING ONE TO A BROADER CLASS OF PERSONS. IN THIS WAY, WE WOULD BE ENSURING EQUAL PROTECTION AND DUE PROCESS TO ALL HERETOFORE DESCRIBED "UNGOVERED" EMPLOYEES BEFORE CERTAIN ADVERSE ACTIONS ARE INITIATED AGAINST THEM. I MIGHT ADD THAT THIS IS THE ONLY GROUP OF POSTAL EMPLOYEES NOT ENTITLED TO COLLECTIVE BARGAINING RIGHTS UNDER LAW.

FINALLY, MR. CHAIRMAN, S. 541, INCLUDES AN AMENDMENT REQUESTED LAST YEAR BY THE U. S. POSTMASTER GENERAL AND APPROVED BY THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE. THE AMENDMENT WOULD AUTHORIZE THE U. S. POSTAL SERVICE, ALONG WITH THE OFFICE OF PERSONNEL MANAGEMENT, TO FILE A PETITION FOR JUDICIAL REVIEW OF A FINAL MERIT SYSTEMS PROTECTION BOARD ORDER OR DECISION IN ADVERSE POSTAL CASES. I HAVE NO OBJECTION TO THIS AMENDMENT.

MR. CHAIRMAN, I URGE SWIFT AND FAVORABLE ACTION ON THIS LONG OVERDUE LEGISLATION. THANK YOU.

Statement By

S E N A T O R D A V I D K A R N E S

Regarding
S. 541
A Bill Addressing Procedural
and
Appeal Rights of Certain Postal Service Employees

April 22, 1987

Mr. President, as a cosponsor of S. 541, I, too, would like to offer a few brief remarks about the benefits of the concept this legislation promotes.

As we are aware, under current law, postmasters and supervisors have virtually no recourse in personnel matters which reflect negatively on their performance record. In the event they wish to appeal accusations regarding their performance, they face a system in which the accuser, judge and jury are basically one in the same. Thus, the first step of their appeal process is literally their last. I believe we can easily see the inequities of such a system.

It is important that we understand that this legislation will not create a new appeals system for a select group of federal employees. Rather, S. 541 will afford postmasters and supervisors the same appeals process all other federal employees receive in regard to adverse personnel matters.

Last Congress, the House of Representatives passed legislation that was nearly identical to the measure we are discussing today. Unfortunately, the Senate did not have the opportunity to act on the measure prior to the end of the Congress. This year, the House and Senate are once again working together to modify this situation in a positive manner. In light of the widespread support of Members both in the Senate and the House, I am confident we will see this proposal advance in the very near future.

Thank you for the opportunity to address your committee today Mr. Chairman. In closing, I would simply like to urge each of the committee members to work with us in advancing this important legislation.

TESTIMONY BY UNITED STATES SENATOR HARRY REID
BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON S.541, A BILL TO EXTEND APPEAL RIGHTS TO POSTAL EMPLOYEES

Mr Chairman. I am pleased to have the opportunity to lend my voice in support of S. 541, a bill introduced by my good friend Senator David Pryor to grant appeal rights to certain employees of the Postal Service. The very fact that there are currently 64 cosposnsors of this legislation point out the broad backing for this bill.

Currently postmaster and postal supervisors do not have the same right to an impartial review of adverse personnel actions enjoyed by their veteran coworkers. I am a strong supporter of the various programs the Congress has enactd over the years to ensure that veterans, and particularly combat veterans, receive preference in federal hiring and certain other federal programs. These individuals made important sacrifices for their country and they deserve every chance to reintegrate themselves into our society. However, this situation is different, and I don't believe there was ever any intent by Congress to deny the right to postal supervisors and postmasters to appeal adverse personnel decisions to the Merit System Protection Board.

This legislation was introduced last Congress and reported out by the Committee on Governmental Affairs. I have been visited by postmasters and postal supervisors who live and work in Nevada and they feel that this legislation corrects a major injustice in the law governing postal service employees.

I want to commend the Chairman on moving ahead with this bill in a timely fashion, and I hope that we can get it passed and signed into law this year.

Thank you.

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